



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
February 05, 2025

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 24-10688-MKN
)	Chapter 7
JUDGE T. PHILLIPS, III,)	
)	
Petitioning Creditor,)	
)	
ROBERT VITELLI)	Date: October 23, 2024
aka ROBERT ABRAMS)	Time: 2:30 p.m.
dba ACCELERATED RESULTS)	
VENTURES)	
dba DONE FOR YOU BIZ SOLUTIONS,)	
)	
Alleged Debtor.)	

**ORDER ON FORMER ALLEGED DEBTOR'S MOTION FOR JUDGMENT AGAINST
JUDGE T. PHILLIPS, III¹**

On October 23, 2024, the court held a hearing telephonically on the Former Alleged Debtor's Motion for Judgment Against Judge T. Phillips, III, brought in the above-captioned proceeding ("Judgment Motion"). James T. Leavitt, Esq., appeared on behalf of alleged debtor, Robert Vitelli. Petitioning creditor in pro se, Judge T. Phillips, III, did not appear. After the hearing was concluded, the matter was taken under submission.

¹ In this Order, all references to "ECF No." are to the number assigned to the documents filed in the above-captioned bankruptcy case as they appear on the dockets maintained by the clerk of the court. All references to "Section" are to provisions of the Bankruptcy Code, 11 U.S.C. § 101, et seq. All references to "Bankruptcy Rule" shall be to the Federal Rules of Bankruptcy Procedure. All references to "Evidence Rule" shall be to the Federal Rules of Evidence applicable in bankruptcy proceedings under Bankruptcy Rule 9017. All references to "Local Rule" are to the Local Rules of Bankruptcy Practice for this judicial district.

BACKGROUND

On January 5, 2024, an involuntary Chapter 7 petition was filed in the Orlando Division of the United States Bankruptcy Court for the Middle District of Florida (“Florida Court”). It was assigned Case No. 6:24-bk-00049-GER. The only petitioning creditor is Judge T. Phillips III (“Phillips”), a resident of Lake Mary, Florida, who filed the involuntary petition in pro se. The alleged debtor is Robert Vitelli (“Vitelli”), an individual residing in Las Vegas, Nevada.

On February 15, 2024, the Florida Court entered an order transferring this involuntary proceeding to the District of Nevada (“Nevada Court”). Upon transfer, the involuntary proceeding was assigned Nevada bankruptcy Case No. 24-10688-mkn.

On February 16, 2024, a copy of the Florida Court’s transfer order was filed in the Nevada Court. (ECF No. 10). On the same date, an involuntary summons was issued by the Nevada Court requiring Phillips to serve the involuntary petition on Vitelli. (ECF No. 11). The summons also scheduled a status hearing to be held on March 20, 2024.

On March 20, 2024, the status hearing was held, but Phillips did not show up.

On March 22, 2024, an order to show cause (“OSC”) was issued scheduling a hearing on April 17, 2024, and requiring Phillips to explain why the involuntary proceeding should not be dismissed due to his failure to appear on March 20, 2024. (ECF No. 12).

On April 12, 2024, a letter from Phillips was entered on the docket to which are attached four unauthenticated copies of various documents, apparently in response to the OSC.² (ECF No. 14).

² In the letter, Phillips makes numerous factual assertions and representations, most of which are not based on personal knowledge. Attached as Exhibit “A” to the Amended Response is an unauthenticated copy of an undated document headed by the words “Wagner, Falconer & Judd, Ltd.” addressed to “Dear Accelerated Results Ventures Client.” The document purports to announce that an entity named “Accelerated Results Ventures llc” closed its doors, has dissolved permanently, and identifies Vitelli is the president of the entity. None of the four pages attached to the April 12, 2024, letter suggest or demonstrate that a judgment has been entered determining the validity of Phillips’ claim, that litigation has ever been commenced to establish the claim, or that an agreement has been reached with Vitelli.

1 On April 17, 2024, the OSC was held by telephone, at which Phillips appeared in pro se.
2 At the hearing, Phillips was granted an extension of time to May 15, 2024, to serve the summons
3 and involuntary petition. The hearing was continued for status to May 22, 2024.

4 On May 15, 2024, another letter from Phillips was entered on the docket in which he
5 requested in pro se an additional extension of time to serve the involuntary petition on Vitelli
6 (“Letter Request”).³ (ECF No. 16).

7 On May 22, 2024, the continued status hearing on the OSC was conducted by telephone.
8 Phillips appeared in pro se and the matter was continued to July 10, 2024.⁴

9 On May 30, 2024, counsel for Vitelli filed an Emergency Motion to Sell Homestead
10 Property located at 9364 Topanza Canyon Street in Las Vegas, Nevada (“Emergency Sale
11 Motion”).⁵ (ECF No. 18).

12 On June 4, 2024, an order was entered shortening time so that the Emergency Sale
13 Motion could be heard on June 18, 2024. (ECF No. 22).

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³ In the Letter Request, Phillips represents that on May 2, 2024, he had been in contact
17 with the Nevada Attorney General’s office regarding a possible criminal investigation of Vitelli,
18 that Phillips had contacted Vitelli’s realtor in Las Vegas, and that Phillips intended to have two
19 other individuals join in the involuntary petition. Attached to the Letter Request are
20 unauthenticated copies of additional materials, including an affidavit attesting that on May 8,
21 2024, the realtor had been served with a copy of a “Lawful Notification and Demand” signed by
22 Phillips. In that Lawful Notice and Demand, Phillips represented that the involuntary
23 bankruptcy petition against Vitelli had been filed, that the realtor could be held personally liable
24 to Phillips and others if the realtor participated in the sale of Vitelli’s real property, that an arrest
25 warrant was being issued for Vitelli, and that the realtor could be criminally prosecuted for
26 conspiracy. Also attached to the Letter Request is a copy of an “Affidavit” dated 04/24/2024
27 signed by Arshad Hussain that includes what appears to be the affiant’s Social Security Number
28 and home address.

⁴ At the hearing, the court asked Phillips whether he had ever consulted qualified counsel,
to which Phillips replied that he had not done so. When the court informed him that he should
do so, Phillips responded “okay.”

⁵ Attached as Exhibit “A” to the Emergency Sale Motion is a copy of a Seller’s
Settlement Statement indicating that the subject property would be sold for \$1,250,000, with a
net due to the seller of \$1,196,043.88.

On June 6, 2024, Phillips filed in pro se a “Motion to Amend Petition to Add Additional Creditors and Modify Order to Sell Homestead Property and Extension of Time to Obtain Counsel” (“Motion to Amend”).⁶ (ECF No. 24).⁷

On June 11, 2024, in lieu of answering the involuntary petition,⁸ Vitelli filed a motion to dismiss the involuntary proceeding under Section 303(h)(1) (“Dismissal Motion”).⁹ (ECF No. 29). The Dismissal Motion was noticed to be heard on July 17, 2024. (ECF No. 30).

⁶ Attached to the document are nine unauthenticated pages in support of his alleged claim against Vitelli. Those pages included copies of affidavits signed by Phillips and four other individuals identified as Terry Rousseau, Jr., John D. Lewis, Jospeh Nemchik, and Arshad Hussain. The affidavit from Arshad Hussain has a 06/07/2024 signature date. Like the affiant’s prior affidavit that was filed by Phillips, see note 3, supra, this affidavit includes Arshad Hussain’s Social Security Number and home address. All of the affiants assert similar claims. None of the affidavits, however, attest that judgments had been obtained against Vitelli or that any proceedings had been commenced to establish the liability or amount of any claims against Vitelli. None of the affidavits are accompanied by true and correct copies of any judgments entered against Vitelli. None of the affiants are signatories to the Motion to Amend. None of the affidavits are from attorneys or legal counsel attesting that they were requested to provide or did provide Phillips (or the other affiants) with legal advice on the propriety of filing an involuntary bankruptcy petition against Vitelli.

⁷ The Motion to Amend was never calendared to be heard by the court because Phillips, in pro se, never filed a notice of hearing as required by Local Rule 9014(a)(5) and Local Rule 9014(b). Because Phillips is not an attorney, he cannot represent the other alleged claimants without at least a power of attorney, and he may have attempted the unauthorized practice of law. If the other claimants had been allowed to join in the involuntary petition, its subsequent dismissal would have exposed them to Vitelli’s instant request for costs, attorney’s fees, damages, and punitive damages under Section 303(i).

⁸ When an alleged debtor answers an involuntary petition and contests the basis for involuntary relief, a trial may be conducted as necessary to resolve any disputed issues of fact or law. See, e.g., In re Petrus, 662 B.R. 713, 743 (Bankr. D. Nev. 2024) (whether the petition is filed by a sufficient number of creditors, whether the creditors’ claims are contingent as to liability, whether the claims are subject to bona fide dispute as to liability or amount, whether the aggregate amount of the claims are at least \$18,600, and whether the alleged debtor is generally not paying debts as they become due). When an alleged debtor files a motion to dismiss for failure to state a claim for which involuntary relief may be granted, a trial is not required where the necessary elements for involuntary relief cannot be pled by the petitioner.

⁹ In the Dismissal Motion, Vitelli disputed the factual and legal basis for Phillips’ claim. See Dismissal Motion at 7:3-17. Attached to the Dismissal Motion were unauthenticated copies of various documents marked as six separate exhibits. Exhibit “A” consists of a copy of the involuntary petition signed by Phillips under penalty of perjury that he filed in the Florida Court.

1 On June 18, 2024, the telephonic hearing was conducted on the Emergency Sale Motion.
 2 Phillips appeared in pro se as well as counsel for Vitelli. Separate counsel also appeared
 3 telephonically on behalf of the purchaser of the subject real property.¹⁰

4 On June 25, 2024, an order was entered granting the Emergency Sale Motion that was
 5 heard on June 18, 2024. (ECF No. 46). The order authorized the sale of the subject property but
 6 required the net sale proceeds to be held in escrow pending the outcome of the involuntary
 7 petition.¹¹

8 On June 28, 2024, Phillips filed in pro se a “Notice to Court in Support of Denying
 9 Debtor’s Motion to Dismiss Case.”¹² (ECF No. 47).

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 11 In Part 2 of that involuntary petition, Phillips identifies Vitelli’s residential address as 452 East
 12 Silverado Ranch Boulevard, Las Vegas, Nevada 89123, and his business address as 555 East
 13 Silverado Ranch Boulevard, #1062, Las Vegas, Nevada 89123. In Part 3, Phillips attests that
 14 “Over the last 180 days before the filing of this bankruptcy, the debtor has resided, had the
 15 principal place of business, or had principal assets in this district longer than in any other
 16 district.” In the same Part 3, Phillips also alleges that “The debtor is generally not paying such
 17 debtor’s debts as they become due, unless they are the subject of a bona fide dispute as to
 18 liability or amount.” In the same Part 3, Phillips lists himself as the only petitioning creditor.
 19 Part 4 specifically states that “Petitioners request that an order for relief be entered against the
 20 debtor under the chapter specified in Part 1 of this petition.” Part 4 also specifically informs the
 21 petitioning creditors that “If relief is not ordered, the court may award attorney’s fees, costs,
 22 damages, and punitive damages. 11 U.S.C. § 303(i).” The remaining exhibits attached to the
 23 Dismissal Motion are identical to materials previously submitted by Phillips. None of the
 24 exhibits suggest or infer that Phillips or any other alleged claimants sought or obtained
 25 judgments or agreements determining the liability or amount of any claims against Vitelli.

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 27 ¹⁰ At the hearing on the Emergency Sale Motion, the court inquired whether Phillips is
 28 seeking additional time to obtain counsel for himself or for any other potential petitioning
 creditors. Phillips responded that he was seeking to obtain counsel just for himself at the time.

¹¹ According to the Seller’s Settlement Statement, see note 5, supra, the net sale proceeds
 due to the seller was \$1,196,043.88.

¹² Attached to the document are three unauthenticated pages in support of Phillips’
 alleged claim against Vitelli. One of the pages appears to be an email exchange dated June 13,
 2024, between Phillips and a representative of the office of the Nevada Attorney General. That
 email exchange, if any, does not suggest that an investigation had resulted in an arrest warrant
 being issued on Vitelli. None of the attached pages suggest that a judgment had been entered
 against Vitelli nor that a criminal prosecution had been initiated or concluded.

1 On July 3, 2024, Phillips filed in pro se a “Creditor’s Reply in Opposition to Debtor’s
2 Motion to Dismiss and Request for Court to Require Petitioning Creditor to Post Bond (DOC.
3 No. 29).”¹³ (ECF No. 48).

4 On July 3, 2024, Vitelli filed through his counsel an “Opposition to Petitioning Creditor’s
5 Motion to Appoint Trustee and Non-Opposition to Petitioning Creditor’s Motion to Vacate.”
6 (ECF No. 49).

7 On July 5, 2024, Vitelli filed a Declaration of Robert Vitelli in Support of Opposition to
8 Creditors Motion to Appoint Trustee (“Vitelli Sale Declaration”).¹⁴ (ECF No. 50).

9 On July 11, 2024, Vitelli filed a response in support of the Dismissal Motion. (ECF No.
10 51).

11 On July 17, 2024, the Dismissal Motion was heard telephonically, and Phillips appeared
12 in pro se. Vitelli appeared through his counsel.¹⁵ After arguments were presented, the Dismissal
13 Motion was taken under submission based on the record presented to the court.

14 On July 29, 2024, an order was entered granting the Dismissal Motion (“Dismissal
15 Order”).¹⁶ (ECF No. 53). A “Notice of Dismissal; Notice that all Pending Hearings are
16 Vacated,” also was entered. (ECF No. 54). The Dismissal Order expressly provides that
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19 ¹³ The document is not accompanied or supported by a declaration, affidavit, or other
admissible evidence to establish any of the factual allegations it contains.

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21 ¹⁴ Vitelli attests that the sale of his homestead closed on June 21, 2024. See Vitelli Sale
Declaration at ¶ 11.

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23 ¹⁵ At the hearing on the Dismissal Motion, the court again asked Phillips whether he had
obtained counsel. Phillips responded that he had not done so as of yet but would do so after the
Dismissal Motion was decided.

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25 ¹⁶ Phillips asserts that he has a claim against Vitelli, but the validity of that claim has
never been adjudicated. Among other reasons, the court dismissed the involuntary petition
because:
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27 “Petitioner acknowledges that prior to filing the involuntary petition, no judgment
by any court was entered determining Vitelli’s liability to the Petitioner, nor the
28 amount of any such liability. Additionally, Petitioner acknowledges that prior to
filing the involuntary proceeding, no legal proceeding was commenced in any

“dismissal of this involuntary proceeding under Federal Rule of Civil Procedure 12 and 19 is not on the merits of the substantive claims, if any, of the petitioning creditor. Those claims must be brought separately, if at all, in an appropriate non-bankruptcy court of competent jurisdiction.”

Dismissal Order at 7:2-5 (emphasis added). The Dismissal Order was not appealed and is final.

On August 26, 2024, Vitelli filed a Motion to Reopen Involuntary Chapter 7 Case (“Motion to Reopen”). (ECF No. 59). The motion was noticed to be heard on October 2, 2024. (ECF No. 61).

On August 28, 2024, Vitelli filed the instant Judgment Motion against Phillips.¹⁷ (ECF No. 63). Separately filed was a copy of the declaration of Robert Vitelli (“Vitelli Declaration”)¹⁸

court to determine Vitelli’s liability to the Petitioner nor the amount of any such liability.”

Dismissal Order at 4:10-14. Because his claims against Vitelli had not been adjudicated before he filed the involuntary petition, those claims were in bona fide dispute at the time the petition was filed and remain in dispute.

¹⁷ Five unauthenticated documents are attached as exhibits to the Judgment Motion. Exhibit “A” is a copy of the Lawful Notification and Demand that Phillips previously served on the realtor as discussed at note 3, supra. Exhibit “B” is a copy of the Dismissal Motion. Exhibit “C” is a copy of the Dismissal Order. Exhibit “D” is a copy of the Declaration of Robert Vitelli in Support of Former Alleged Debtor’s Motion for Judgment Against Judge T. Phillips, III (“Vitelli Declaration”). Exhibit “E” is a copy of an email exchange dated June 3, 2024, between Phillips and counsel for Vitelli.

¹⁸ Three unauthenticated documents are attached as exhibits to the Vitelli Declaration. Exhibit “A” consists of copies of three invoices from Leavitt Legal Services, P.C. (“Leavitt Invoices”), which appeared before the court as counsel on behalf of Vitelli. Those three invoices, numbered 1422, 1444, and 1468, include both attorney’s fees and reimbursable costs advanced. \$1,050, \$7,525, and \$5,250 are charged for attorney’s fees from May 28, 2024 through July 30, 2024, and \$1.74 and \$8.60 are charged for costs advanced. A total of \$13,825 in attorney’s fees and \$10.34 in costs advanced (totaling \$13,835.34) are reflected in Exhibit “A.” Exhibit “B” consists of copies of two invoices from the Reisman Sorokac law firm (“Reisman Invoices”), which apparently provided legal consultation to Vitelli but did not make an appearance before the court. Those two invoices, numbered 04240021 and 05240020, are solely for attorney’s fees in the amounts of \$455 and \$630, totaling \$1,085 for services rendered from April 1, 2024, through May 23, 2024. The first Reisman Invoice, however, references services in connection with a stipulated dismissal of a lawsuit rather than the involuntary petition. Exhibit “C” appears to be copies of print outs of online information for roundtrip flights between Las Vegas and Ho Chi Min City having a September 1 departure date and a

1 which already was included in the exhibits attached to the Judgment Motion. (ECF No. 64). The
2 motion was noticed to be heard on October 2, 2024. (ECF No. 65).

3 On October 2, 2024, Phillips filed in pro se his response (“Response”) to the Judgment
4 Motion. (ECF No. 66). On the same date, the Motion to Reopen was heard telephonically and
5 granted. Phillips appeared at the hearing in pro se along with counsel for Vitelli. The hearing on
6 the Judgment Motion was continued to October 23, 2024.

7 On October 7, 2024, an order was entered granting the Motion to Reopen the involuntary
8 Chapter 7 case. (ECF No. 68).

9 On October 16, 2024, Vitelli filed a reply (“Reply”)¹⁹ in support of the Judgment Motion.
10 (ECF No. 71).

11 On October 21, 2024, Phillips filed an amended response (“Amended Response”) to the
12 Judgment Motion.²⁰ (ECF No. 72).

13 On October 23, 2024, the continued hearing on the Judgment Motion was conducted
14 telephonically. Phillips did not appear at the hearing but counsel for Vitelli did so. After oral
15 arguments were presented, the Judgment Motion was taken under submission.

16 DISCUSSION

17 In resolving the previous Dismissal Motion, the court expressly determined as follows:

18 Based on the foregoing, there is no dispute that Petitioner is the only alleged
19 creditor that has petitioned under Section 303 for involuntary bankruptcy

20 September 22 return date, plus currency exchange information indicating that as of August 16,
21 2024, currency in the amount of 500,000,000 dong (Vietnamese) was the equivalent of
22 \$19,964.05 (US).

23 ¹⁹ Attached to the Reply are unauthenticated copies of two documents marked as separate
24 exhibits. Exhibit “A” consists of copies of email exchanges between various individuals that
25 occurred between 2022 and 2023, which may have been provided by Vitelli to his bankruptcy
26 counsel. Exhibit “B” is a copy of this court’s June 25, 2024, order granting the Emergency Sale
27 Motion. The Reply is not accompanied by a supplemental declaration from Vitelli, nor even an
28 initial declaration of his counsel, providing evidence of any of the items that may be recovered
under Section 303(i).

²⁰ Attached as Exhibit “A” to the Amended Response is an unauthenticated copy of the
“Wagner, Falconer & Judd, Ltd.” document previously submitted by Phillips as an attachment to
his April 12, 2024, letter response to the OSC. See note 2, supra.

relief against Vitelli. There is no dispute that no other alleged creditor has joined in the involuntary bankruptcy petition. There is no dispute that the Petitioner has never commenced a legal proceeding to determine the liability and amount of the Petitioner's alleged claim against Vitelli. There is no dispute that Petitioner has never obtained a judgment establishing that Vitelli is liable to the Petitioner for any amount. There is no dispute that there is no evidence that any other alleged creditor has commenced a legal proceeding to determine the liability and amount of any alleged claims against Vitelli. There is no dispute that there is no evidence that any other alleged creditor has obtained a judgment establishing that Vitelli is liable to an alleged creditor for any amount. There is no dispute that, in absence of any judgments determining the liability and amount of any claims against Vitelli, a bona fide dispute exists as to both liability and amount of any such claims. Under these circumstances, Section 303(h)(1) does not permit the bankruptcy court to enter an order for relief against Vitelli. Likewise, Section 303(h)(2) would not apply inasmuch as a custodian cannot have been appointed by a court of competent jurisdiction within 120 days before the involuntary petition was filed.

Dismissal Order at 5:5-20 (emphasis added). For the reasons stated in that order, the court dismissed the involuntary proceeding against Vitelli but reserved jurisdiction with respect to any claims brought by Vitelli against Phillips under Section 303(i). See Dismissal Order at 6:22 to 7:1.

By the instant Judgment Motion, Vitelli now seeks relief against Phillips under Section 303(i). That statute provides as follows:

If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment –

(1) against the petitioners and in favor of the debtor for –

(A) costs, or

(B) a reasonable attorney's fee; or

(2) against the petitioner that filed the petition in bad faith, for –

(A) any damages proximately caused by such filing; or

(B) punitive damages.

11 U.S.C. § 303(i)(1) and (2). (Emphasis added.) Because the statute uses the word “or” rather than “and,” the relief available under Subsections (1) and (2) as well as subparagraphs (A) and (B) are written in the disjunctive. Thus, by its express terms, the disjunctive language in Section 303(i) apparently grants discretion to the court to award the amounts in Subsection (1) or Subsection (2), but not both. Similarly, the disjunctive language in Subsection (1) grants

discretion to the court to award either costs under its subparagraph (A), or a reasonable attorney’s fee under its subparagraph (B), but not both. And if the court determines that the involuntary petition was filed in bad faith, the disjunctive language in Subsection (2) grants discretion to the court to award damages proximately caused by the filing of the involuntary petition under its subparagraph (A), or punitive damages under its subparagraph (B), but not both.

Despite this use of the disjunctive term “or” in Section 303(i), however, courts have relied on the language of Section 102(5) to permit all of the remedies under Section 303(i) to be sought by an alleged debtor. Section 102 sets forth various “Rules of construction” for the Bankruptcy Code and Section 102(5) provides that the word “or” is not exclusive.” 11 U.S.C. §102(5). Because the word “or” is meant to not exclude the forms of relief specified in Section 303(i), this non-intuitive, statutory rule of construction allows all of the remedies to be awarded. See In re National Medical Imaging, LLC, 2023 WL 2256725, at *19 n.43 (Bankr. E.D. Pa. Feb. 27, 2023) (“Although the statutes is written in the disjunctive, the judicial consensus is that all of the remedies provided in § 303(i) are available to a putative debtor.”).²¹ By the instant Judgment Motion, Vitelli seeks anything or everything he can get under both Subsections (1) and (2) as well as their respective subparagraphs (A) and (B).

Under subparagraph (A) of Subsection (1), the term “costs” relates to the cost of defending the involuntary petition, including witness fees, reporting services, transcription costs, and costs of discovery. See 2 COLLIER ON BANKRUPTCY, ¶ 303.33[4][a] (Richard Levin & Henry J. Sommer eds., 16th Ed. 2024). As used in subparagraph (B), the phrase “reasonable attorney’s fee” requires an assessment of the time spent and rate charged by counsel in obtaining dismissal of the involuntary petition as well as pursuit of an award under Section 303(i). See 2 COLLIER ON BANKRUPTCY, supra, at ¶ 303.33[4][b].

²¹ See, e.g., In re John Richards Homes Building Co., L.L.C., 291 B.R. 727 (Bankr. E.D. Mich. 2003) (attorney’s fees and costs awarded under 303(i)(1) as well as compensatory damages under 303(i)(2)(A) and punitive damages under 303(i)(2)(B)), aff’d, 312 B.R. 849 (E.D.Mich. 2004), aff’d, 439 F.3d 248 (6th Cir. 2006), cert. denied, 549 U.S. 818 (2006).

Under subparagraph (A) of Subsection (2), an alleged debtor can recover damages proximately caused by the filing of the involuntary petition or punitive damages, but only on proof that the petition was filed in bad faith. As used in its subparagraph (A), the phrase “damages proximately caused by such filing” requires proof of damages that are proximate to the filing of the petition, that are quantifiable, and supported by sufficient evidence. See 2 COLLIER ON BANKRUPTCY, supra, at ¶ 303.33[6][a].²² As used in its subparagraph (B), the term “punitive damages” encompasses the punishment and deterrent purposes typically considered in any such award, but the award is discretionary “even when the involuntary filing is found to have been in bad faith.” Id. at ¶ 303.33[6][b].

In this instance, Vitelli argues that Phillips filed the involuntary petition in bad faith. See Judgment Motion at 4:18 to 7:5; Reply at 1:23 to 5:7. Vitelli maintains that Phillips acted in objective bad faith, see Judgment Motion at 4:18 to 6:2, as well as in subjective bad faith (or a combination) under a variety of different tests. See Reply at 2:2 to 5:7. Based on these assertions, Vitelli argues that he is entitled to damages proximately caused in the amount of \$48,920.34. See Judgment Motion at 7:17. Included in that \$48,920.34 damage figure are \$13,835.34 in attorney’s fees allegedly charged by his bankruptcy counsel and \$1,085.00 apparently paid to other counsel.²³ Id. at 7:18-19. The balance of the \$48,920.34 figure consists of \$19,000 of travel rewards value that Vitelli purportedly lost when a credit card allegedly was

²² Merely asserting that the filing of the involuntary petition damaged the debtor’s business reputation or goodwill is not sufficient without actual proof. Id.

²³ Under the “American Rule,” litigants typically are required to pay their own attorney’s fees unless otherwise provided by contract, rule or statute. See generally Baker Botts L.L.P. v. ASARCO LLC, 135 S.Ct. 2158, 2164 (U.S. 2015). Absent such provisions, attorney’s fees generally are not included as part of an award of damages. Compare Hwang v. Redwood Fire & Casualty Ins. Co., 714 F.Supp.3d 1280, 1289 (D. Nev. 2024) (attorney’s fees may be sought as special damages if permitted under applicable Nevada law). In this instance, Section 303(i) departs from the American Rule by expressly allowing the alleged debtor to recover a reasonable attorney’s fee from the petitioner under Section 303(i)(1)(B), separate and apart from the recovery of any form of damages allowed under Section 303(i)(2). Congress’s choice to specifically allow a reasonable attorney’s fee in Subsection (1)(B) but not address attorney’s fees as part of the damages allowed in Subsection (2) cannot be ignored. Thus, the court concludes that Vitelli’s effort to seek attorney’s fees under Section 303(i)(2) is misguided.

1 canceled due to the involuntary bankruptcy filing,²⁴ \$2,500 in legal fees estimated to be incurred
2 to repair his credit, and \$3,500 in “administrative staff costs and expenses” resulting from the
3 involuntary filing. Id. at 7:19-24. In addition to the \$48,920.34 amount, Vitelli apparently
4 suggests that he lost interest in the amount of \$9,000²⁵ resulting from Phillips’ use of the
5 involuntary petition to interfere with the sale of his homestead. See Reply at 5:13-18.

6 Vitelli also argues that he is entitled to punitive damages. See Judgment Motion at 7:15-
7 18; Reply at 6:19-21. Vitelli does not propose or suggest a specific amount of punitive damages,
8 nor does he offer evidence of Phillips’ financial resources that would infer an amount sufficient
9 to punish or deter his behavior. Vitelli does not cite any controlling caselaw providing guidance
10 in determining the amount of a punitive damages award under Section 303(i)(2)(B).

11 Not surprisingly, Phillips maintains that he has a viable claim against Vitelli that he
12 attempted to pursue in good faith by filing the involuntary petition. See Response at 2:12 to 3:9;
13 Amended Response at 2:12 to 4:17. Phillips argues that he had reason to believe Vitelli was
14 insolvent and was not paying his debts. See Response at 2:18-20; Amended Response at 2:18-
15 20.²⁶ He alleges that he consulted with legal advisors and relied on legal advice before
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18 ²⁴ This amount apparently is based on the roundtrip flight and currency exchange
19 information attached as Exhibit “C” to the Vitelli Declaration. See note 18, supra.

20 ²⁵ Sale of the homestead was permitted by the order entered on June 25, 2024, but it
21 appears that the sale actually closed on June 21, 2024, before the order was even entered. See
22 note 14, supra. The net sale proceeds originally were anticipated to be \$1,196,043.88. See notes
23 5 and 11, supra. The involuntary petition was dismissed on July 29, 2024. It is not clear when
24 the sale would have closed, the interest rate that would apply to delayed access to the net
proceeds, or exactly how Vitelli arrives at the \$9,000 figure. Without such information, the
amount requested is speculative and unproven.

25 ²⁶ Phillips has submitted copies of various documents in this proceeding, but none of
26 them demonstrate that Vitelli is insolvent or was not generally paying his debts as they become
27 due. In other words, Phillips’ assertions are not based on personal knowledge and are not
28 competent within the meaning of Evidence Rule 602. Moreover, Phillips’ opinions are not
rationally based on events or facts that he has personally witnessed, are not helpful to
determining a fact at issue, and therefore are not admissible under Evidence Rule 701.

commencing the involuntary proceeding. See Response at 3:1-9; Amended Response at 4:10-17.²⁷

The court has considered the arguments and representations of the parties in addition to the entire record presented. Based on those considerations, the court concludes that the Judgment Motion should be granted in part as set forth below.

First, Vitelli is entitled a judgment against Phillips under Section 303(i). The court previously dismissed the involuntary petition other than on Vitelli's consent and the right to a judgment under Section 303(i) was not waived. Thus, the only question is whether relief under Subsection (1) and Subsection (2) is appropriate.

Second, the court finds that the involuntary petition was filed in bad faith. There is no dispute that Phillips originally commenced the involuntary proceeding in the Middle District of Florida even though he knew that Vitelli lives in Nevada. See note 9, supra. When the Florida Court scheduled a hearing on an order to show cause why the involuntary proceeding should not be transferred to the District of Nevada, Phillips never responded nor appeared at the hearing.²⁸ After the involuntary proceeding was transferred to this court, Phillips did not properly serve the summons and involuntary petition and the initial status hearing set for March 20, 2024, was continued several times at his request. Because the summons was never served, Vitelli never had

²⁷ Phillips previously submitted copies of affidavits from individuals alleging claims against Vitelli that have not been adjudicated and involving alleged debts that have not been established in a court of law. See discussion at note 6, supra. Phillips has not submitted copies of any agreements signed by Vitelli or any representative of Vitelli establishing the amount of any debts. Although Phillips represents that he consulted with legal advisors before filing the involuntary petition, he has offered no affidavits or declarations under penalty of perjury from any licensed attorneys or counselors corroborating his representation. It is not surprising that licensed attorneys would be unwilling to testify under penalty of perjury that they gave professionally negligent advice that subjected the petitioner to liability under Section 303(i). Compare 2 COLLIER ON BANKRUPTCY, supra, ¶ 303.33[5][b] ("However, while advice of counsel may not mitigate against a malicious filing, it may provide the petitioner with the basis of a cause of action against counsel based on malpractice.")

²⁸ Pursuant to Evidence Rule 201(b), the court takes judicial notice of the materials and information appearing on the case docket maintained by the Florida Court. See United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980). See also In re Blas, 614 B.R. 334, 339 n.27 (Bankr. D. Alaska 2019)("This court may take judicial notice of the docket of other courts.").

the opportunity to dispute the validity or amount of Phillips' claims in this bankruptcy court, and Phillips acknowledges that his claims against Vitelli were never adjudicated before the involuntary petition was filed nor were any other legal proceedings commenced at which the claims could be determined. Yet before the summons was even served on Vitelli, Phillips also used the filing of the involuntary petition to threaten Vitelli's realtor with criminal prosecution for participating in the sale of Vitelli's homestead. See discussion at note 3, supra.²⁹ Before the summons was even served on Vitelli, Phillips also represented to Vitelli's realtor that a warrant was being issued for Vitelli's arrest. See id. Phillips maintains that he received legal advice before initiating the involuntary proceedings, yet he never identifies the source of the alleged advice nor does he present evidence from the source confirming that such advice was given. On several occasions during the involuntary proceeding, Phillips was advised to seek bankruptcy counsel, or he represented that he was seeking to retain counsel, but he has never done so. See notes 4, 10 and 15, supra. Even though the involuntary petition alleges that Vitelli "is generally not paying such debtor's debts as they became due," the petition does not include any petitioning creditor that holds a debt for which payment was determined to be due as of the petition date. See discussion at note 9, supra. Even though the involuntary petition signed by Phillips under penalty of perjury warned him that he could be subject to liability for "attorney's fees, costs, damages, and punitive damages" under Section 303(i), see id., he apparently has relied on his own advice rather than obtaining qualified counsel. As Phillips is not an attorney, his botched attempt to add more unrepresented claimants also may have constituted the unlicensed practice of law.³⁰ Under all of these circumstances, the court concludes that Phillips acted in objective bad faith, if not subjective bad faith, in filing the involuntary petition.

²⁹ By threatening criminal prosecution to collect a debt or gain advantage, Phillips' own conduct may have violated the Nevada criminal statute governing extortion. See generally NEV.REV.STAT. 205.320 ("A person who, with the intent to extort or gain any money or other property...threatens directly or indirectly...to accuse any person of a crime...is guilty of a category B felony...").

³⁰ Moreover, Phillips sought to add other claimants as petitioners in this proceeding by filing a Motion to Amend on their behalf in which he publicly disclosed the Social Security

Third, Subsection (1) permits entry of a judgment for costs within the meaning of subparagraph (A) and a reasonable attorney's fee under subparagraph (B). In this instance, the only permissible costs incurred by Vitelli in defending the involuntary petition was the \$10.34 in reimbursable costs set forth in the Leavitt Invoices.³¹ See discussion at note 18, supra. The only attorney's fees incurred by Vitelli in defending the involuntary petition was the \$13,825 amount reflected in the Leavitt Invoices and the \$630 amount reflected in the second Reisman Invoice (No. 05240020). See id. Together, those invoices total \$14,455. The court having reviewed each of the billing invoices from counsel, finds that the \$10.34 of costs incurred were appropriate and that Vitelli's attorneys are qualified to provide the services performed at the hourly rates charged and did so for an appropriate amount of time. The court therefore concludes that those attorney's fees in the total amount of \$14,455 are reasonable.

Fourth, Subsection (2) permits a judgment for damages proximately caused by the filing of the involuntary petition within the meaning of subparagraph (A) as well as punitive damages under subparagraph (B). As previously mentioned at 11-12, supra, Vitelli seeks damages in the total amount of \$48,920.34 consisting of the attorney's fees included in the Leavitt Invoices and the Reisman Invoices, \$19,000 in the estimated value of travel awards allegedly lost due to the cancellation of a credit card,³² \$2,500 in estimated legal fees to repair his credit, and \$3,500 of estimated "administrative staff costs and expenses." The attorney's fees, however, are not included under Subsection (2) because the Bankruptcy Code specifically addresses the availability of reasonable attorney's fees in subparagraph (B) of Subsection (1).³³ The travel

number and other personally identifiable information for at least one of the alleged claimants. See discussion at notes 3 and 6, supra.

³¹ In this instance, the costs were minimal because there were no witness fees, reporting services, transcription expenses, or discovery costs commonly incurred when an involuntary petition is answered and goes to trial.

³² Vitelli asserts that "During the process of defending myself in this involuntary case, my Chase Business credit card was closed." See Vitelli Declaration at ¶ 8.

³³ Even if attorney's fees could be included under subparagraph (B) of Subsection (2), the same amount would be awarded as discussed above, i.e., a total of \$14,455.

awards allegedly lost from a credit card cancellation are simply speculative as there is no evidence from the credit card issuer establishing why Vitelli's credit card was cancelled.³⁴ Legal fees incurred in repairing credit also are speculative and simply guessing at an amount does not satisfy Vitelli's burden of quantifying his losses. Similarly, seeking "administrative staff costs and expenses" is entirely speculative especially when there is no identification of the purported staff, what the staff actually administers, and the nature and value of the costs and expenses incurred.³⁵ On this sparse record, the court concludes that Vitelli has failed his burden of proving under subparagraph (A) of Subsection (1) that his alleged damages were proximately caused by the filing of the involuntary petition.

Fifth, as previously mentioned, Subsection (2) permits entry of a judgment awarding punitive damages under subparagraph (B). Punitive damages go beyond merely compensating the party injured by malicious or bad faith conduct, and are intended to punish the wrongdoer and to deter future misconduct. See generally BMW of North America, Inc. v. Gore, 517 U.S. 559, 568 (1996). Typically, the amount of a punitive damages award must bear some relationship to and be proportionate to the amount of compensatory damages awarded. See generally State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 426 (2003).³⁶ As

³⁴ The first Reisman Invoice (No. 04240021) references other litigation involving Vitelli, see note 18, supra, and the "Wagner, Falconer & Judd, Ltd." document filed on April 12, 2024, references the cessation and permanent dissolution of an entity of which Vitelli was the president. See note 2, supra. Absent any evidence from the issuer of the Chase Business credit card, there is insufficient proof that the filing of the involuntary petition, rather than any other business events, was the proximate cause of the Chase Business credit card cancellation and loss of any travel rewards.

³⁵ It is not clear whether "administrative staff" refers to individuals employed by Vitelli personally, or individuals employed by entities separately organized and separately operated under applicable law.

³⁶ It is not entirely clear whether this principal was considered when Subsection (2) was drafted with subparagraphs (A) and (B) in the disjunctive. In State Farm, the Court concluded that the ratio of punitive damages to compensatory damages generally should not exceed a single digit multiplier. 538 U.S. at 425 ("[W]e have been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award...Single-digit multipliers are more likely to comport with due process, while still

previously concluded, Vitelli has not met his burden of proving that he is entitled to any compensatory damages proximately caused by the filing of the involuntary petition. Punitive damages in the amount of \$7,000 are still appropriate,³⁷ however, to deter Phillips from filing other involuntary petitions in bad faith and from engaging in the misconduct evidenced in the instant case.

CONCLUSION

For the reasons discussed, the court concludes that Vitelli has met his burden of proof on some but not all of the remedies sought by the Judgment Motion. Costs in the amount of \$10.34 shall be allowed under Section 303(i)(1)(A), attorney's fees in the amount of \$14,455 shall be allowed under Section 303(i)(1)(B), and punitive damages in the amount of \$7,000 shall be allowed under Section 303(i)(2)(B). All other relief shall be denied.

This order constitutes the court's findings of fact and conclusions of law as necessary under Bankruptcy Rules 9014(c)(1) and 7052, as well as Civil Rule 52

IT IS THEREFORE ORDERED that the Former Alleged Debtor's Motion for Judgment Against Judge T. Phillips, III brought in the above-captioned proceeding, Docket No. 63, be, and the same hereby is, **GRANTED** in part and **DENIED** in part.

IT IS FURTHER ORDERED that costs in the amount of \$10.34, attorney's fees in the amount of \$14,455, and punitive damages in the amount of \$7,000, are awarded in favor of alleged debtor Robert Vitelli and against petitioner Judge T. Phillips, III. All other relief requested in the subject motion is denied.

IT IS FURTHER ORDERED that a separate judgment in the aforementioned amounts shall be entered under Bankruptcy Rule 7058 and Civil Rule 58(a) contemporaneously with this

achieving the State's goals of deterrence and retribution, than awards with ratios in range of 500 to 1.").

³⁷ The \$10.34 in costs and \$14,455 in attorney's fees allowed by this order total \$14,465.34. Whether that amount constitutes a reasonable attorney's fee under subparagraph (B) of Subsection (1), or can be included as damages proximately caused under subparagraph (A) of Subsection (2), the allowed amount of costs and attorney's fees would be the same. Punitive damages in the amount of \$7,000 represents .48 percent of the of the allowed amount of costs and attorney's fees, i.e., far less than a single-digit multiplier.

1 Order.

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3 Copies sent via CM/ECF ELECTRONIC FILING

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