United States Court of Appeals
For the First Circuit

No. 20-1472

IN RE: DONALD C. KUPPERSTEIN,

Debtor,

DONALD C. KUPPERSTEIN,

Appellant,

v.

IRENE SCHALL, Personal Representative of the Estate of Fred Kuhn; and EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Leo T. Sorokin, U.S. District Judge]

Before

Howard, Chief Judge,
Lipez and Thompson, Circuit Judges.

David G. Baker for appellant.
Roger Stanford, with whom Moses Smith, Markey & Walsh was on brief, for appellee Irene B. Schall.
Paul T. O'Neill, Assistant General Counsel, for appellee Executive Office of Health and Human Services.

April 22, 2021

THOMPSON, Circuit Judge.

BACKGROUND

The short story, sticking with only what is relevant here, is that years ago, Donald C. Kupperstein, with the help of his comrade, Thomas Sheedy, improperly entangled himself with a piece of real property on Reservoir Street in Norton, Massachusetts and lined his pockets with rents from various tenants he installed.[1] In re Kupperstein, 943 F.3d 12, 15-16 (1st Cir. 2019). That property belonged to the estate of Fred Kuhn (the estate is now managed by Irene Schall) and that estate owed a debt to the Massachusetts Office of Health and Human Services, better known as "MassHealth."[2] Id. As a result of Kupperstein's disinterest in relinquishing his claim to the property, all of these parties ended up in Massachusetts Probate Court, Suffolk Superior Court, and Massachusetts Land Court. Motions were filed, orders were entered, and, where it mattered, Kupperstein lost on the merits. Ultimately, the probate court voided the property's transfer (so

[1] We have previously detailed the made-for-TV movie about how Kupperstein (who remains licensed to practice law in Massachusetts) and Sheedy duped the only child of Fred Kuhn, the property's owner, after Kuhn's death, into selling the property for a "pittance" and both ultimately ended up owing a lot of money to the Commonwealth of Massachusetts. See In re Kupperstein, 943 F.3d 12, 15 (1st Cir. 2019).

[2] MassHealth is empowered to recover benefits from a beneficiary's estate after death and, in this case, filed a petition with the Massachusetts Probate Court to ensure payment. See Mass. Gen. Laws ch. 118E, §§ 31, 32.

that Kupperstein and Sheedy had no claim to it) and ordered the duo to pay to MassHealth "any and all" rents collected from the property. Id. at 16-18. Kupperstein and Sheedy disregarded the probate court's order and continued to rent the property for their own gain. Id. at 17. In mid-2017, Sheedy signed over his interest in the property solely to Kupperstein, but neither the estate nor MassHealth saw a dime. Id. So, on August 4, 2017, the probate court held Kupperstein and Sheedy in contempt.

Evidently unphased, Kupperstein rented the property to new tenants about a month later. Id. The probate court did not look kindly upon this and issued an order forbidding Kupperstein from executing any agreements involving the property, voiding anything he had previously executed, and banning Kupperstein, Sheedy, and their agents from entering the property at all. Id.

On December 22, 2017, the probate court again found Kupperstein and Sheedy in contempt and reiterated the order for each to pay the rents they had been collecting to the estate or MassHealth.[3] Id. The probate court also ordered that the pair hand in any keys or other ways to access the property and all

[3] In the months since the last contempt order, Kupperstein had sued the estate in Massachusetts Land Court, seeking a declaration that he was the rightful owner of the property. He had neglected to mention the litigation in the probate court and the order that said otherwise. Once the land court got hip to Kupperstein's game, it dismissed the case because it was brought in bad faith and ordered that he pay attorneys' fees to MassHealth and the estate for their trouble.

documents and leases associated with the property. Id. Plus, the probate court threatened to jail Kupperstein and Sheedy for thirty days if they did not pay MassHealth $5,400. Id. Kupperstein and Sheedy turned in only $3,000 and no keys or leases. Id. Unimpressed, the probate court set a hearing for January 12, 2018, and directed each man to explain why he should not be jailed for contempt for thirty days. Id.

On January 11, 2018, the day before his contempt hearing, Kupperstein filed for bankruptcy in the United States Bankruptcy Court for the District of Massachusetts. Id. at 17-18. To keep things interesting, Kupperstein listed the Kuhn estate as his own property, valued at $350,000. Id.

Kupperstein did show up for his January 12 court date and explained to the probate court that it could not touch him because his bankruptcy filing triggered an automatic stay of court proceedings against him. See 11 U.S.C. § 362(a).[4] The probate court was unmoved and instead put Kupperstein in a holding cell for the day for violating the court's orders four times. In re Kupperstein, 943 F.3d at 18. The probate court yet again ordered Kupperstein to give up the keys to the property, but he maintained he did not have them. Id.

[4] Generally, a bankruptcy filing causes an automatic stay that halts other lawsuits against the debtor until a federal court lifts the stay. 11 U.S.C. § 362(a).

At the next court date, Kupperstein was almost ordered to serve his thirty-day sentence, but then produced $5,400 in cash and the elusive keys to the property. Id.

Then, he vanished. Id. The probate court held Kupperstein in contempt twice more for missing three court dates and continuing to violate its previous orders. Id. The probate court ordered Kupperstein and Sheedy to pay over $50,000 in outstanding rents and over $10,000 in attorneys' fees as sanctions for their repeated flouting of the court's orders. Id. To drive its point home, the court warned that Kupperstein and Sheedy would be jailed for thirty days unless they worked out a payment plan with MassHealth. Id. The probate court issued warrants for his arrest, but Kupperstein remained at large. Id.

Tired of waiting for Kupperstein to return from his sojourn, Schall, in her capacity as the estate's representative, and MassHealth each filed motions in the bankruptcy court to lift the automatic stay as it applied to any state court actions, so those cases could proceed.[5] Id. Kupperstein (through counsel because he was still AWOL) opposed those motions and moved that the bankruptcy court hold MassHealth in contempt and impose

[5] For instance, Suffolk Superior Court had entered judgment ordering that Kupperstein pay the amounts ordered by the probate court, plus over $6,000 in costs and fees awarded by the land court, and $575,240.37 to MassHealth, representing three times the amount initially owed to MassHealth by the estate. In re Kupperstein, 943 F.3d at 18 n.6.

monetary sanctions because MassHealth participated in the probate court's various contempt proceedings in violation of the automatic stay. Id. at 18.

In nearly identical orders, the bankruptcy court found "good cause" to "lift[]" the stay and ordered that the state court actions could proceed, except that Schall and MassHealth could "not seek to enforce against . . . Kupperstein, any judgment with respect to the $191,741.79 MassHealth reimbursement claim or attempt to collect from Kupperstein all or any part thereof." The court lifted the automatic stay in the state court actions "[i]n all other respects . . . including the assessment by the courts against Kupperstein of any restitution and sanction amounts." In support of its decision, the bankruptcy court cited In re Dingley, 852 F.3d 1143 (9th Cir. 2017) and Alpern v. Lieb, 11 F.3d 689 (7th Cir. 1993), two cases where appellate courts affirmed the application of the so-called "police power" exception to the automatic stay.

Soon after, the bankruptcy court denied Kupperstein's motion to hold MassHealth in contempt and to impose sanctions. In re Kupperstein, 943 F.3d at 19. Citing the same cases it cited in its orders granting relief from the stay, the bankruptcy court analyzed the police power exception in more detail and noted that "[a] court's imposition and enforcement of a monetary sanction for contemptuous conduct is an exercise of its police power and is

excluded from the automatic stay by Bankruptcy Code § 362(b)(4)." So, the state court actions that "involved the imposition and enforcement of sanction awards against [Kupperstein] did not violate the automatic stay" and, therefore, neither did MassHealth's participation in those proceedings.

Miffed, Kupperstein appealed those decisions to the district court, but fared no better.[6] In re Kupperstein, 943 F.3d at 19. The district court read all three orders "as having rested -- at least in part, as a separate and independent ground -- on a discretionary determination that relief from the automatic stay was warranted 'for cause' under § 362(d)(1)." In re Kupperstein, Nos. 18-11772-LTS, 18-11851-LTS, 2020 U.S. Dist. LEXIS 70883, at *11 (D. Mass. Apr. 20, 2020). The district court then noted that Kupperstein waived any argument on that point by failing to address it in his briefing. Id. at *12. Taking a belt and suspenders approach, the district court further concluded that the bankruptcy court did not abuse its discretion when finding the balance of the equities favored lifting the stay. Id. Turning to the denial of Kupperstein's motion to hold MassHealth in contempt, the district court affirmed the bankruptcy court's decision, echoing the bankruptcy court's reasoning. Id. at *14-17.

[6] That appeal first bounced from the district court to us (to deal with a procedural issue) and then back to the district court with instructions to resolve the appeal on the merits. See In re Kupperstein, 943 F.3d at 15.

Kupperstein now appeals, asking us to hold that the automatic stay is still in effect and remand this case to the bankruptcy court to sanction MassHealth for violating that stay.[7]

THE POLICE POWER EXCEPTION

When a debtor files for bankruptcy, the petition activates an automatic stay of various judicial and administrative proceedings against the debtor. See 11 U.S.C. § 362(a). The intention is to "give the debtor breathing room by 'stop[ping] all collection efforts, all harassment, and all foreclosure actions.'" In re Soares, 107 F.3d 969, 975 (1st Cir. 1997) (quoting H.R. Rep. No. 95-595, at 340 (1977)). To that end, the stay forbids judicial proceedings against the debtor to progress (even those that had begun before the commencement of the bankruptcy case) until a federal court lifts the stay or closes the case. See id. (citing 11 U.S.C. § 362(a)).

The filing of a bankruptcy petition does not stay a governmental proceeding by "a governmental unit . . . to enforce [its] police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or

[7] Without any support, Kupperstein also instructs us that we ought to order his "release from any further incarceration." Even if we had a stack of "Get Out of Jail Free" cards, we seriously doubt their application to state court contempt proceedings. Plus, we note that at the time his brief was filed, the record indicated Kupperstein had returned, was briefly in custody, and was already again at liberty.

proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power." 11 U.S.C. § 362(b)(4).

To determine if the police power exception applies, we evaluate whether the government's action is to effectuate a "public policy" or to further its own "pecuniary interest." Parkview Adventist Med. Ctr. v. United States, 842 F.3d 757, 763 (1st Cir. 2016) (quoting In re Nortel Networks, Inc., 669 F.3d 128, 140 (3d Cir. 2011)). If "the governmental action 'is designed primarily to protect the public safety and welfare,'" then it passes the "public policy" test and is excepted from the automatic stay. Id. (quoting In re McMullen, 386 F.3d 320, 325 (1st Cir. 2004)). In contrast, if the government is attempting to proceed against the debtor for a "pecuniary purpose," that is, "to recover property from the estate," the police power exception offers no shelter and the proceeding is stayed. Id. This exception intends to discourage debtors from filing bankruptcy petitions "for the purpose of evading impending governmental efforts to invoke the governmental police powers to enjoin or deter ongoing debtor conduct which would seriously threaten the public safety and welfare." In re McMullen, 386 F.3d at 324-27 (distinguishing proceedings to protect the public in the future from those that "seek recompense for [] alleged financial losses").

Though we have not opined precisely on the question at hand, the bankruptcy court cited in its orders two cases where sister circuits applied the "public policy" or "pecuniary interest" test for the police power exception to contempt proceedings. In In re Dingley, the Ninth Circuit held that civil contempt proceedings were excepted from a bankruptcy's automatic stay because those "proceedings are intended to effectuate the court's public policy interest in deterring litigation misconduct." 852 F.3d at 1147-48. In Alpern v. Lieb, the Seventh Circuit similarly held that a proceeding to impose sanctions under Fed. R. Civ. P. 11 was excepted from the automatic stay of bankruptcy, even though the sanctions were monetary where the court ordered the debtor to pay attorneys' fees for his misconduct in a different proceeding. 11 F.3d at 690. Dismissing the notion that a Rule 11 proceeding is not excepted, even though the result could be the payment of money to an individual, the court noted that the purpose of a Rule 11 sanction is to punish "unprofessional conduct in litigation, . . . just as an order of restitution in a criminal case is a sanction even when it directs that payment be made to a private person rather than to the government." Id. Relying on these cases, the bankruptcy court wrote that the purpose of civil contempt proceedings is not to line the government's pockets, but "to uphold the dignity of the court and the judicial process, to punish bad behavior and to educate the public in the importance of

obeying court orders." In re Kupperstein, 588 B.R. 279, 280-81 (Bankr. D. Mass. 2018).

STANDARD OF REVIEW

Where, as here, we serve as a "second tier of appellate review," we look through the district court's determination and analyze the bankruptcy court's decision directly. In re Montreal, Me. & Atl. Ry., Ltd., 956 F.3d 1, 5-6 (1st Cir. 2020). As usual, we review the court's factual findings for clear error and accord no deference to its legal conclusions. Id. at 6. When considering the type of orders at issue here (decisions on motions for relief from a stay and for sanctions), we only reverse where the bankruptcy court abused its discretion. See In re Soares, 107 F.3d at 973 n.4; Hawkins v. Dep't of Health & Human Servs. for N.H., Comm'r, 665 F.3d 25, 31 (1st Cir. 2012). The bankruptcy court abuses its discretion "if it ignores 'a material factor deserving of significant weight,' relies upon 'an improper factor' or makes 'a serious mistake in weighing proper factors.'" In re Fin. Oversight & Mgmt. Bd. for P.R., 939 F.3d 340, 346 (1st Cir. 2019) (quoting In re Whispering Pines Estates, Inc., 369 B.R. 752, 757 (B.A.P. 1st Cir. 2007)).

OUR TAKE

The core dispute is whether the probate court's contempt proceedings and resultant penalties are excepted from the automatic stay (as the bankruptcy court held they were) and

therefore MassHealth's participation did not merit sanctions or whether those proceedings are not excepted, opening a can of worms about whether the bankruptcy court likely abused its discretion in partially lifting the stay and not sanctioning MassHealth.[8] We begin with a de novo review of the legal question of the reach of the police power exception and then evaluate whether the bankruptcy court abused its discretion in each of the challenged orders.

The Police Power Exception

First, all agree we ought to evaluate the probate court's orders through the overlapping lenses of "two interrelated, fact-dominated inquiries": the "public policy" test and the "pecuniary purpose" test. In re McMullen, 386 F.3d at 325. MassHealth and Schall argue that the probate court was merely serving a compelling public policy of enforcing compliance with court orders. For many months prior to his bankruptcy filing, the probate court had been ordering Kupperstein to follow the rules, stop masquerading like he owned the Kuhn house and turn over the rent he illicitly collected, and pay the attorneys' fees he forced others to expend each time he failed to comply. Kupperstein consistently declined.

[8] There does not appear to be any dispute that the superior court, land court, and probate court fall within the Code's definition of "governmental unit," defined as a "department, agency, or instrumentality of . . . a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state." 11 U.S.C. § 101(27). The question is more precisely whether the contempt proceedings are excepted from the stay.

Kupperstein, for his part, sees this as a classic case of the government pursuing a pecuniary interest because there is money involved in the probate court's orders. But that ignores the full range of the probate court's instructions. The probate court's contempt orders included instructions to Kupperstein to turn over keys to the property, to cease leasing the property to tenants as the landlord and to not engage in any new leases, and to turn over any documents he had previously executed regarding renting the property. These orders of the court are plainly not an attempt to collect money and there is simply nothing in the "pecuniary interest" test or the Bankruptcy Code, generally, forbidding a court from ordering that a debtor hand over the keys to a house that he does not own. Rather, a court (or other governmental agency) "acts in the interest of public safety and welfare" when it ensures unscrupulous actors do not have keys to property over which they have no ownership. See In re Spookyworld, Inc., 346 F.3d 1, 9 (1st Cir. 2003) (holding that a town's proceedings to enjoin a company for failing to install sprinkler systems in its structures in violation of the building code constituted actions undertaken for the benefit of public safety); In re McMullen, 386 F.3d at 326-27 (finding that a board's proceedings to revoke an unscrupulous real estate broker's license constituted actions taken to benefit the public welfare). Kupperstein has no counter-argument to this (not that a strong one

could be conjured anyway) because he entirely ignores it in his brief, waiving any challenge to the bankruptcy court's order lifting the stay as it applies to those provisions of the probate court's order. See Marek v. Rhode Island, 702 F.3d 650, 655 (1st Cir. 2012).

Turning to the aspects of the probate court's order involving money, Kupperstein does expend many pages of his brief on the argument that the police power exception does not apply to MassHealth's attempts to collect the underlying debt in the probate court, and he's right. But, the record shows that no one is currently trying to collect on that judgment. The bankruptcy court order explicitly maintains the automatic stay for any activity related to judgments against Kupperstein for the nearly $200,000 owed to MassHealth via the Kuhn property. And, post-petition, no court ordered Kupperstein to satisfy the judgment against him. As such, Kupperstein's extensive argument on this point is merely fighting a straw man, and we need engage no further.

So, finally, what about the aspects of the probate court's contempt orders that require Kupperstein to pay sanctions for repeated violations of court orders and disgorge the rents he collected (in violation of court orders) from tenants (living on a property over which Kupperstein had no legal control)? He argues that any attempt by the probate court to force Kupperstein to hand over so much as a dime is automatically for a "pecuniary purpose."

But this ignores the distinction between a judgment prematurely awarding assets to creditors ahead of the process permitted by the bankruptcy court (exactly the sort of thing the automatic stay is intended to prevent, see In re Spookyworld, 346 F.3d at 10) and an order commanding disgorgement of ill-gotten gains accumulated in direct violation of a court order. Federal courts regularly approve the application of the police power exception to the latter. See United States v. LASR Clinic of Summerlin, LLC, No. 2:19-cv-00467-GMN-NJK, 2020 WL 6044550, at *2 (D. Nev. Oct. 12, 2020) (approving of police power exception to permit the government to pursue False Claims Act case to recover improper government payments to debtor); In re RGV Smiles by Rocky L. Salinas D.D.S. P.A., Nos. 20-70209, 20-70210, 2021 WL 112182, at *6 (Bankr. S.D. Tex. Jan. 6, 2021) (applying police power exception to state Medicaid fraud statute to permit government to pursue funds illegally claimed by debtor); Al Stewart v. Holland Acquisitions, Inc., No. 2:15-cv-01094, 2021 WL 1037617, at *1 (W.D. Pa. Mar. 18, 2021) (permitting Fair Labor Standards Act case to proceed under police power exception, including action for back pay, where debtor allegedly withheld pay legally owed to employees). The automatic stay's "main purpose is to prevent some private creditors from gaining priority on other creditors." In re Spookyworld, 346 F.3d at 10. Neither MassHealth nor Schall would gain any priority on Kupperstein's other creditors because the bankruptcy court order

does not permit the probate court to command Kupperstein to pay his debts to either party. Any claim MassHealth or Schall has to Kupperstein's estate remains unchanged by this order. See Chao v. Hosp. Staffing Servs., Inc., 270 F.3d 374, 389 (6th Cir. 2001) (applying pecuniary purpose test to ensure government action would not give certain creditors an "advantage" over other creditors).

Even if the financial aspects of the probate court's orders arguably serve a pecuniary purpose (though we hold they do not), that still would not change the result of our analysis. Where the application of the police power exception contains various elements, some of which effectuate a public policy and others of which could involve pecuniary interests, we examine the totality of the circumstances and what "the governmental action 'is designed primarily to [do].'" Parkview Adventist Med. Ctr., 842 F.3d at 763 (quoting In re McMullen, 386 F.3d at 325). Here, the rent payments and attorneys' fees only manifested after Kupperstein ignored the probate court's earlier orders to relinquish the keys, stop renting the house to others, and stop pocketing the proceeds. Even after the bankruptcy filing, some of the probate court's contempt orders did not demand the payment of any money and, instead, reiterated the court's primary desire to force Kupperstein to cede control of the house. Kupperstein's own refusal of earlier orders that had no money at stake created this situation and our case law is clear that we do not reward debtors

who submit bankruptcy petitions to avoid governmental orders. See In re McMullen, 386 F.3d at 324-25 (noting that the police power exception discourages the submission of bankruptcy petitions "for the purpose of evading impending governmental efforts to invoke the governmental police powers to enjoin and deter ongoing debtor conduct which would seriously threaten the public safety or welfare"). Put another way, "[a] litigant should not be allowed to delay the imposition of sanctions indefinitely by the expedient of declaring bankruptcy." Alpern, 11 F.3d at 690. Any way we slice it, the probate court's contempt orders pass the public policy test and are not to serve a pecuniary purpose.

Kupperstein raises two additional arguments that merit our discussion. Pointing to 11 U.S.C. § 362(b)(4), he believes that the "plain language" of the Code makes our resolution of this case "crystal clear." On its face, the Code's plain language does not address this question at all. Yet, best we can cobble together, based on the assumptions wrapped up in Kupperstein's contentions, he seems to be trying to tell us the following: the police power exception does not apply to enforcing "money judgement[s]" and any court action with money involved is an action to enforce a "money judgment." Kupperstein's argument here is actually a repackaging of his contention that the probate court order is for a pecuniary purpose. On that point, we remain unmoved.

Finally, Kupperstein explains, we are bound by our precedent in Parker v. United States, which he says stands for the proposition that civil contempt proceedings are for a pecuniary purpose and are therefore subject to the automatic stay. 153 F.2d 66 (1st Cir. 1946). But Parker is inapplicable here. In that case, issued prior to the promulgation of the Bankruptcy Code, the court considered whether a pre-bankruptcy civil contempt award was dischargeable after the close of bankruptcy. Id. at 67-68. The court did not wrestle with any of the questions at issue here. Kupperstein cites to it for its lengthy discussion of the differences between civil and criminal sanctions, but there is no dispute that the probate court orders here are civil in nature (having been imposed to coerce Kupperstein's compliance with valid Massachusetts court orders) and that the Code permits some civil actions to proceed during the automatic stay. See 11 U.S.C. § 362(b).

With no more arguments to address and considering the totality of the circumstances, we conclude the probate court's contempt orders are excepted from the automatic stay under the police power exception.[9]

[9] Because we resolve the issues on appeal based on the police power exception, we need not address the bankruptcy court's lifting of the automatic stay "for cause" under 11 U.S.C. § 362(d)(1). We note here, however, that Kupperstein's argument on appeal that he "has carefully reviewed the appellees' motions for relief from the automatic stay, and can find no reference to that section in the

The Merits of Kupperstein's Appeals

With the law on this issue firmly established, our resolution on the merits of the bankruptcy court's orders becomes simple. The bankruptcy court did not abuse its discretion when lifting the stay as it applied to the probate court's contempt proceedings because those proceedings were excepted from the stay under the police power exception. Similarly, the bankruptcy court did not abuse its discretion when it declined to hold MassHealth in contempt or levy any sanctions against it for its participation in the probate court's contempt proceedings. Those proceedings were not stayed by the automatic stay, so MassHealth's participation was proper.

CONCLUSION

The bankruptcy court's decisions were correct and the district court properly affirmed. We **affirm** the district court's order and award costs to the appellees.

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motions" is unavailing and misleading, as MassHealth's memorandum in support of its motion for stay relief, which was before the bankruptcy court, clearly lays out an entire section of argument premised on 11 U.S.C. § 362(d)(1). Indeed, it is Kupperstein who should be concerned about waiver, as he doubles down in his appellate briefing by failing to address the merits of the § 362(d)(1) argument, only arguing waiver and that the bankruptcy court's use of "good cause" was boilerplate language, despite the fact that the court was briefed on this issue. The district court's emphasis on the alternative grounds of § 362(d)(1) gave Kupperstein ample notice and opportunity to address the merits of any such argument.

In re DONALD C. KUPPERSTEIN, Appellant.

Civil Nos. 18-11772-LTS, 18-11851-LTS

United States District Court, D. Massachusetts.

April 22, 2020.

ORDER ON BANKRUPTCY APPEALS

LEO T. SOROKIN, District Judge.

Donald C. Kupperstein has appealed two decisions by the United States Bankruptcy Court for the District of Massachusetts: one granting relief from the automatic stay with respect to certain actions pending in state courts, and another denying Kupperstein's request for contempt sanctions against a creditor he alleged had violated the automatic stay. The two appeals were consolidated. For the reasons that follow, both Bankruptcy Court orders are AFFIRMED.

I. BACKGROUND[1]

The sordid and convoluted path to the rulings at issue here began in November 2014, when Kupperstein and Thomas Sheedy visited Carol Thibodeau in Rhode Island. They persuaded Thibodeau to sell Sheedy a home in Norton, Massachusetts that had belonged to her deceased father. The "price" they negotiated was something less than $100, plus a promise to resolve a local tax lien just shy of $3,400. The deal was struck without consulting Thibodeau's lawyer, who was assisting her in her role as the personal representative of her father's estate, and without regard for a second lien on the home—about which Kupperstein knew—securing a debt of more than $191,000 that the Estate owed the Massachusetts Executive Office of Health and Human Services ("MassHealth" or "EOHHS").

When Thibodeau's lawyer learned of the "sale" shortly after it occurred, he promptly contacted Kupperstein to inform him that any sale of the property without satisfying the MassHealth lien, and without approval from the Bristol County Probate Court, was invalid. Kupperstein ignored this admonishment, renovated and leased the Norton home, and kept the rent, all while EOHHS and the Estate embarked on an arduous campaign to reclaim what was rightfully theirs—a campaign which Kupperstein sought to frustrate at every turn.

The seeds of this dispute, planted by Kupperstein in Thibodeau's living room, bloomed into a number of separate lawsuits in various Massachusetts courts and, ultimately, into federal bankruptcy proceedings. The state proceedings relevant here are: 1) an action filed in Suffolk County Superior Court by EOHHS against Kupperstein, Sheedy, and Thibodeau in July 2015 challenging the sale of the Norton home, Doc. No. 11[2] at 137-51; 2) the reopening of Bristol County Probate Court proceedings regarding the Estate via a petition by EOHHS for authorization to sell the Norton home to satisfy the MassHealth lien, id. at 187-95; and 3) an action Kupperstein filed in Land Court to try title to the Norton home, id. at 31-39.[3]

The Superior Court dismissed EOHHS's fraud claim, finding that the complaint alleged misrepresentations made only to Thibodeau, not to EOHHS itself.[4] Id. at 184. Later, the Superior Court entered summary judgment in favor of the defendants (including Kupperstein) on all but two of EOHHS's remaining claims. Id. at 168-78. Though the Superior Court concluded it could not invalidate or rescind the sale to Sheedy by Thibodeau, who had received title to the home

by operation of her father's will, it noted that the home likely remained subject to the MassHealth lien under state law, "Thibodeau's sale to Sheedy notwithstanding," and it suggested EOHHS could file "a petition in Probate Court seeking a license to sell the Property to satisfy the Estate's debt." Id. at 172-73. After Kupperstein filed for bankruptcy, the Superior Court stayed its proceedings as to the remaining claims for unjust enrichment and statutory treble damages. Id. at 69-74.

Taking the Superior Court's advice, EOHHS went to the Probate Court.[5] The Probate Court invalidated the transfer of the Norton home from Thibodeau to Sheedy, ruled the home remained an asset of the Estate, directed Thibodeau to sell the home to satisfy the MassHealth lien, and ordered Kupperstein and Sheedy to provide an accounting for, and pay to EOHHS, any rents received by leasing the home. Id. at 25-29. Kupperstein did not appeal the Probate Court's decision, nor did he comply with it. Thereafter, proceedings in the Probate Court devolved into a series of contempt hearings and orders arising from Kupperstein's refusal to relinquish control over the Norton home. EOHHS filed a complaint for contempt in June 2017, and the Probate Court entered its first judgment finding Kupperstein in civil contempt of its prior order in August 2017 for refusing to return more than $33,000 in rents—money Kupperstein collected after having leased a property he did not rightly own. Id. at 41-42.

When the Probate Court refused to vacate its finding of contempt, id. at 107, Kupperstein turned to the Land Court. He fared no better there, though. His October 2017 complaint seeking to try title to the Norton home—in which he conveniently omitted any reference to the Probate Court's decision on that very subject—was promptly dismissed by the Land Court after EOHHS intervened and provided the information Kupperstein had withheld. Id. at 31-39. In addition to dismissing the action, the Land Court's December 21, 2017 order found Kupperstein's claims were frivolous and brought in bad faith, and that his willful failure to disclose the Probate Court's ruling and EOHHS's status as a lienholder was aimed at interfering with the Probate Court proceedings. The Land Court imposed sanctions of more than $9,000, reflecting attorney fees incurred by EOHHS and the Estate to intervene and respond to the Land Court action. Unsurprisingly, Kupperstein never paid the sanctions. Like the Superior Court, the Land Court stayed its own contempt proceedings when Kupperstein filed for bankruptcy, pending a determination by the Bankruptcy Court about the application of the automatic stay. Id. at 95-97.

While the Land Court case was pending, the Probate Court issued an order that, among other things, prohibited Kupperstein from executing or recording any documents regarding the Norton home without leave of court, nullified a deed purporting to convey the property from Sheedy to a trust controlled by Kupperstein, and prohibited Sheedy and Kupperstein from entering the property. Id. at 30. Upon dismissal of the Land Court action, the Probate Court again held Kupperstein in contempt, this time imposing a thirty-day sentence, which it suspended, and ordering Kupperstein to close all bank accounts associated with the property, provide written confirmation and pay over all sums from those accounts to EOHHS, surrender any keys to the property, and provide any leases or other documents regarding the property to the Estate's lawyer. Id. at 43. When Kupperstein failed to comply with that order, the Probate Court ordered him to show cause why the thirty-day sentence should not be imposed and set a contempt hearing for January 12, 2018. Id. at 43-44.

On the eve of that hearing, Kupperstein filed for bankruptcy. He listed the Norton home as an asset.[6]

The Probate Court went forward with its contempt hearing, sent Kupperstein to jail for the afternoon, but then released him and reiterated its order to surrender keys and leases and pay back past rent for the property. Doc. No. 55-14. At the next contempt hearing, Kupperstein apparently made a cash payment toward the amount owed in past rent to avoid imprisonment, though he otherwise continued to defy the Probate Court's orders.[7] He did not ask the Bankruptcy Court at that time to enforce the automatic stay with respect to the Probate Court proceedings or to hold EOHHS or the Estate in contempt for continuing to participate in those proceedings.

On April 12 and May 10, 2018, the Probate Court issued orders finding Kupperstein in contempt for willfully violating its

prior orders by continuing to execute documents regarding the property, entering and exercising control over the property, changing the locks, installing a new tenant, failing to pay the amounts due as prior contempt sanctions, and claiming the property as an asset in his bankruptcy petition. Doc. No. 11 at 45-50. The Probate Court imposed sanctions of $54,750 as restitution of funds stolen from the Estate (rent collected while unlawfully leasing the property), $10,485 in attorney fees incurred by EOHHS and the Estate as a result of Kupperstein's contempt, and statutory interest of $70,289.65. All three amounts were described by the Probate Court as contempt sanctions it believed were exempt from the Bankruptcy Court's automatic stay. The order of statutory interest was held in abeyance pending review of Kupperstein's compliance with the other aspects of the order, and the thirty-day sentence remained in play but was again suspended.

Thereafter, Kupperstein attempted to remove the various state court actions to the Bankruptcy Court, triggering motions by EOHHS and the Estate—both of whom had expressed their intent to file adversary complaints in the bankruptcy case—seeking to remand the actions to state court and requesting an order lifting the automatic stay or finding it inapplicable as to those state actions. While these motions were pending before the Bankruptcy Court, Kupperstein failed to appear for a continuation of his contempt hearing in Probate Court. Id. at 116. At a May 30, 2018 hearing, the Bankruptcy Court remanded the removed actions to their respective state courts and requested further briefing on the nature of the stay relief sought by the Estate and EOHHS. During that hearing, Kupperstein (through counsel) agreed that the Norton home was not his property, was not an asset of the bankruptcy estate, and should be sold to satisfy the MassHealth lien. The Bankruptcy Court granted limited relief from the automatic stay to permit the house to be sold.

In July 2018, Kupperstein filed a motion asking the Bankruptcy Court to hold EOHHS in contempt, arguing it had violated the automatic stay by continuing to participate in the Probate Court contempt hearings after learning Kupperstein had filed for bankruptcy. Meanwhile, Kupperstein skipped another contempt hearing in Probate Court. Doc. No. 55-18 at 3.

On August 13, 2018, the Bankruptcy Court granted the motions by EOHHS and the Estate seeking relief from the automatic stay. It did so in virtually identical one-page orders finding "good cause" to allow the motions and providing:

> The actions presently pending in the Bristol County Probate and Family Court . . . and the Suffolk County Superior Court . . . may proceed in all respects, except movant may not seek to enforce against the debtor, Donald C. Kupperstein, any judgment with respect to the $191,741.79 MassHealth reimbursement claim or attempt to collect from Kupperstein all or any part thereof. In all other respects the automatic stay with respect to the aforementioned proceedings is lifted, including the assessment by either court against Kupperstein of any restitution and sanction amounts and further proceedings to enforce and collect those amounts. *See* *In re Di[ng]ley,* 852 F.3d 1143 (9th Cir. 2017); *Alpern v. Lieb,* 11 F.3d 689 (7th Cir. 1993).

Doc. No. 55-2. Shortly thereafter, the Bankruptcy Court denied Kupperstein's request for a stay pending his appeal to this Court.[8]

The Bankruptcy Court held a hearing on Kupperstein's motion for sanctions against EOHHS on August 21, 2018. It denied the motion the next day. The Bankruptcy Court found "that all proceedings in the Probate Court occurring after January 11, 2018, were initiated by the Probate Court" and "involved the Probate Court's efforts to enforce its orders entered against [Kupperstein] in the nature of sanctions imposed upon [him] for his repeated contempt of court." Doc. No. 55-4 at 2. Because such efforts are "an exercise of [the court's] police power," the Bankruptcy Court found that they are "excluded from the automatic stay by Bankruptcy Code § 362(b)(4)." Id. It considered the First Circuit cases upon which Kupperstein relied but reasoned that they precluded application of the police power exemption only "when the police power is exercised to further the governmental unit's `pecuniary interest' or for a `pecuniary purpose,'" and did not prevent a court from imposing "a monetary sanction to punish misconduct," where the court's aim is "to uphold the

dignity of the court and the judicial process, to punish bad behavior and to educate the public in the importance of obeying court orders." Id. at 2-3. Because the Probate Court had not violated the automatic stay by continuing with its contempt proceedings, the Bankruptcy Court concluded that "EOHHS's involvement in those actions did not violate the stay." Id. at 4.

Kupperstein promptly appealed this ruling, too, and both appeals are now ripe for resolution on their merits.[9] As the Court's review is limited to the facts that were before the Bankruptcy Court at the time of its decisions, it need not recount here the events that unfolded after those decisions issued. Suffice it to say that Kupperstein's resistance to the state courts' orders did not abate.

II. LEGAL STANDARDS

A. Standard of Review

In general, a bankruptcy court's conclusions of law are reviewed de novo, its findings of fact are reviewed for clear error, and decisions or actions that are within its discretion are reviewed for abuse of that discretion. In re San Miguel Sandoval, 327 B.R. 493, 505-06 (B.A.P. 1st Cir. 2005); accord In re Stevenson, 583 B.R. 573, 578 (B.A.P. 1st Cir. 2018).

The standard this Court applies in reviewing the Bankruptcy Court's order granting relief from the automatic stay depends on the basis upon which such relief was granted. To the extent the Bankruptcy Court determined that the relevant state proceedings were within the police or regulatory power exception and, thus, beyond the reach of the automatic stay, this Court applies de novo review in construing the statutory exception. In re Soares, 107 F.3d 969, 973 (1st Cir. 1997). If, however, the Bankruptcy Court made a discretionary decision to lift the automatic stay for good cause shown, this Court reviews such a decision for abuse of discretion. Id. at 973 n.4.

The same framework applies to this Court's review of the second order on appeal—the denial of Kupperstein's request for sanctions against EOHHS.[10] To the extent the Bankruptcy Court determined that there was no violation of the automatic stay because the proceedings at issue were not encompassed by it, this Court reviews that legal conclusion de novo, and any findings of fact supporting it for clear error. To the extent the Bankruptcy Court made a discretionary decision not to impose sanctions, this Court reviews that decision for abuse of discretion. Id. at 973 n.4, 976.

"An abuse of discretion occurs when the [bankruptcy] court ignores a material factor deserving significant weight, relies upon an improper factor, or assesses all proper and no improper factors, but makes a serious mistake in weighing them." In re Witkowski, 523 B.R. 300, 305 (B.A.P. 1st Cir. 2014). A bankruptcy court's "discretion is necessarily broad," and only "limited circumstances" will merit reversal of decisions made in the exercise of such discretion. In re San Miguel Sandoval, 327 B.R. at 506 (quotation marks omitted).

B. The Bankruptcy Code

The automatic stay is described in 11 U.S.C. § 362(a), which provides:

> Except as provided in subsection (b) of this section, a [bankruptcy] petition . . . operates as a stay applicable to all entities, of—
>
> (1) The commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the [bankruptcy] case . . ., or to recover a claim against the debtor that arose before the commencement of

> the [bankruptcy] case . . .;
>
> (2) The enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the [bankruptcy] case . . .; * * *
>
> (6) Any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the [bankruptcy] case . . . .

Twenty-eight exceptions to the automatic stay are enumerated in § 362(b), which provides that the filing of a bankruptcy petition "does not operate as a stay":

> (1) Under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;
>
> * * *
>
> (4) Under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit. . . to enforce such governmental unit's . . . police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's . . . police or regulatory power . . . .

The Bankruptcy Code defines "governmental unit" as follows:

> The term "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States . . ., a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

11 U.S.C. § 101(27).

Finally, in § 362(d), the Bankruptcy Code empowers a bankruptcy court to lift the automatic stay in certain circumstances:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under [§ 362(a)], such as by terminating, annulling, modifying, or conditioning such stay—
>
> (1) For cause, including the lack of adequate protection of an interest in property of such party in interest . . . .

"Cause" is not defined, and it is not limited to the one specific example provided in the text of § 362(d)(1). In re Fin. Oversight & Mgmt. Bd. for P.R., 939 F.3d 340, 346-47 (1st Cir. 2019). Courts, including the First Circuit, have identified a number of factors that can "provide a helpful framework" for determining whether there is cause to lift the automatic stay, but the decision (and the factors) remain highly case-specific. Id.; accord In re Haines, 309 B.R. 668, 674 (Bankr. D. Mass. 2004).

III. DISCUSSION

A. Automatic Stay Relief

In seeking relief from the automatic stay, the Estate and EOHHS argued that the pertinent state court actions were exempt from the stay (as either the equivalent of criminal contempt proceedings under § 362(b)(1), or as actions by a government unit to enforce its police or regulatory power under § 362(b)(4)), and, in the alternative, that the stay should be lifted for good cause under § 362(d)(1). Doc. No. 11 at 211, 215-25, 229-32. On appeal to this Court, the parties focus their arguments on the applicability of § 362(b)(4), the so-called "police or regulatory power exception" to the automatic stay.[11]

The Bankruptcy Court's orders granting relief from the stay do not expressly invoke any specific provision of the Bankruptcy Code, but their language suggests the Bankruptcy Court rested its decision on both alternatives raised by the Estate and EOHHS—application of an exception under § 362(b)(4), and an act of discretion under § 362(d)(1). As to the former, the Bankruptcy Court cited In re Dingley and Alpern v. Lieb, both of which are decisions construing the police and regulatory power exception in § 362(b)(4). It pointed to those cases again when it subsequently ruled that EOHHS had not violated the automatic stay. The orders granting stay relief, however, did not pronounce the Probate Court and Superior Court actions "exempt" or "excluded" from, or "beyond the reach of," the automatic stay. Instead, the Bankruptcy Court emphasized having held a hearing, invoked the "good cause" standard, and ruled that the automatic stay was "lifted." Such language echoes the standard for granting relief from the automatic stay with respect to proceedings that otherwise would fall within it. See § 362(d)(1) (requiring a hearing and permitting a Bankruptcy Court to grant relief from the automatic stay, upon "request of a party in interest," "for cause"). Additionally, the Bankruptcy Court used forward-looking language, allowing that the relevant actions "may proceed" and that the state courts may hold "further proceedings to enforce" the contempt sanctions. It says nothing about events that previously occurred in state court.

In light of the foregoing, this Court reads the Bankruptcy Court's orders granting relief from the automatic stay as having rested—at least in part, as a separate and independent ground—on a discretionary determination that relief from the automatic stay was warranted "for cause" under § 362(d)(1).[12] This Court reviews such a determination for abuse of discretion.

Before conducting such a review here, the Court notes that Kupperstein is the appealing party. Despite EOHHS having expressly supported its motion for stay relief by invoking § 362(d)(1)—an argument to which Kupperstein responded before the Bankruptcy Court—and despite the prospective "lifting" language of the order being appealed as discussed above, Kupperstein limits his challenge on appeal to whether the police and regulatory power exception applies. Nowhere in his briefs does Kupperstein acknowledge the alternative ground supporting the Bankruptcy Court's ruling, let alone establish an abuse of discretion. Accordingly, Kupperstein has waived any challenge to the lifting of the stay for cause pursuant to § 362(d)(1). His waiver alone justifies AFFIRMING the Bankruptcy Court's order granting stay relief on that ground.

Even if the Court were inclined to excuse Kupperstein's waiver (and it does not), it would find no abuse of discretion by the Bankruptcy Court. The circumstances presented here include at least several features which favor finding cause to lift the stay. First, Kupperstein's pattern of disregarding, circumventing, and/or violating outright the clear orders of the Probate Court has provoked nearly every court presented with issues involving or arising therefrom to comment on the outrageousness of his actions. The Probate Court's interest in upholding its dignity and punishing this level of serial contempt for its orders is substantial, and allowing it to pursue proceedings designed with that aim in mind is sensible. Second, a substantial portion (approximately one-third) of the total contempt sanctions imposed by the Probate Court essentially seeks the return of funds that never were Kupperstein's in the first place and, thus, are not properly part of his bankruptcy estate. More than $50,000 of the sanctions are for rent Kupperstein collected, having unlawfully leased the Norton home (which, as he eventually conceded to the Bankruptcy Court, was not his to rent), and having continued to do so despite clear orders of the Probate Court to cease and surrender all past and future rents. Third, it appears plain that Kupperstein's conduct, from 2014 to the present, has directly and meaningfully harmed the Estate and

EOHHS (not to mention Thibodeau) by requiring them to endure what the First Circuit described as "legal whack-a-mole" in order to wrest the Norton home from Kupperstein's grip and, now, repair the damage his transgressions have caused. Finally, the Estate and EOHHS have represented here and to the Bankruptcy Court that probate of the Estate cannot be completed while the Probate Court action, including the contempt proceedings, remains unfinished.

No abuse of discretion could arise from concluding that a balancing of the equities here strongly disfavors Kupperstein, or that consideration of any set of helpful factors yields a finding of cause sufficient to warrant lifting the automatic stay. Cf. In re Soares, 107 F.3d 969, 975 (1st Cir. 1997) (acknowledging "that bankruptcy courts traditionally pay heed to equitable principles"). Kupperstein has not established, nor does the record reveal, any material factor that the Bankruptcy Court failed to consider, any improper factor upon which the Bankruptcy Court relied, or any basis to find the Bankruptcy Court erred in its weighing of the pertinent facts. Accordingly, the Bankruptcy Court's order granting stay relief for cause pursuant to § 362(d)(1) is AFFIRMED.

Given this Court's reading of the order granting relief from the stay, and its affirmance thereof, the Court need not resolve the thornier question of whether the police and regulatory power exception to the automatic stay in § 362(b)(4) applies and separately supports the Bankruptcy Court's decision to lift the stay.[13]

B. Denial of Sanctions

In July 2018, while the motions for stay relief were pending in the Bankruptcy Court, Kupperstein moved for a finding that EOHHS had violated the automatic stay by continuing to participate in Probate Court proceedings after Kupperstein filed for bankruptcy.[14] After a hearing, the Bankruptcy Court demurred in a second order which Kupperstein brings to this Court for review.

Though the Probate Court's contempt hearings originally were triggered by a complaint EOHHS filed before Kupperstein instituted bankruptcy proceedings, the record confirms the Bankruptcy Court's factual finding that EOHHS did nothing post-petition to instigate further proceedings or request new sanctions. Rather, it participated in continued proceedings as required by the Probate Court.

In finding this participation did not warrant a contempt finding or sanctions, the Bankruptcy Court first examined whether the post-petition actions the Probate Court had taken were within the scope of the automatic stay. Finding that the Probate Court was a "governmental unit" acting to enforce a sanction it had imposed "to punish misconduct" as "an exercise of its police power"—and not for the court's own pecuniary interest—the Bankruptcy Court ruled its actions had not violated the automatic stay. In so concluding, the Bankruptcy Court quoted Judge Posner, writing for the Seventh Circuit in Alpern, who warned against construing the police and regulatory power exception to the automatic stay in a manner which would encourage litigants to resort to "the expedient of declaring bankruptcy" in an effort "to delay the imposition of sanctions [for their unprofessional conduct in litigation] indefinitely." 11 F.3d at 690. Having determined the Probate Court's contempt proceedings were not barred by the stay, the Bankruptcy Court found EOHHS had not willfully violated the stay by participating in those proceedings at the Probate Court's direction.

In reaching this decision, the Bankruptcy Court (necessarily) considered those actions of the Probate Court occurring between January 11, 2018 (the date on which Kupperstein filed his bankruptcy petition) and August 13, 2018 (the date on which the Bankruptcy Court lifted the stay as to the Probate Court proceedings). In that time, the Probate Court: 1) held a January 12, 2018 hearing at which it found Kupperstein in contempt for failure to surrender keys and leases for the Norton home; 2) held a March 9, 2018 hearing at which it found Kupperstein in contempt for failure to turn over leases for the Norton home and rent he collected while leasing it despite not owning it; 3) requested and received from EOHHS a brief regarding the impact of the bankruptcy on the Probate Court contempt proceedings; 4) issued two contempt orders listing numerous ways in which Kupperstein had violated past orders (the bulk of which imposed

nonmonetary requirements), determining the nature of the sanctions to impose, and suspending a thirty-day sentence pending further hearing; and 5) held two further contempt hearings on May 18, 2018 and July 6, 2018 at which warrants were issued for Kupperstein's failure to appear and a license was granted for the sale of the Norton home. Doc. No. 11 at 45-50, 116, 187-95; Doc. No. 55-14; Doc. No. 55-18.

Considering both the scope of the misconduct to which the Probate Court was responding and the nature of the actions and orders in the relevant time period, the Bankruptcy Court neither erred in its legal analysis of the Probate Court's actions nor abused its discretion in determining that contempt sanctions were not warranted against EOHHS. The Probate Court plainly was acting to vindicate its authority to enforce its own orders, not to further its own pecuniary interests.[15] Its orders during the relevant time period required Kupperstein to surrender keys and documents associated with a property that was not his and to repay rent he essentially stole from the Estate by wrongly leasing that property. The Probate Court also assessed (but did not collect) other monetary sanctions it specified were intended as penalties for Kupperstein's contempt.[16] Moreover, the same reasons cited above as support for the Bankruptcy Court's discretionary determination that stay relief was warranted also support its decision to deny Kupperstein's request for contempt sanctions.[17]

Accordingly, the Bankruptcy Court's order denying Kupperstein's motion for contempt and sanctions is AFFIRMED.

IV. CONCLUSION

In sum, Kupperstein cannot escape the consequences of his consistent contempt for the Estate, EOHHS, and multiple Massachusetts courts, and his serial defiance of valid court orders. His misconduct underlying this case alone spans more than five years, and the published decisions of other courts suggest it is part of a pattern that began long before Kupperstein arrived at Thibodeau's house in 2014.

Two decades earlier, a different United States Bankruptcy Judge in this District found "cause to consider whether the Debtors and their attorney, Mr. Kupperstein, acted with fraudulent intent" in omitting a significant tort claim from their bankruptcy schedules. In re Jeffrey, 176 B.R. 4, 5 n.2 (Bankr. D. Mass. 1994). In 2011, Justice Spina of the Massachusetts Supreme Judicial Court entered an order suspending Kupperstein's law license for one year for intermingling client and personal funds without keeping required records, as well as negligently and intentionally misusing client funds in two cases between 2002 and 2008. In re Kupperstein, No. BD-2011-086, 2012 WL 13104933, at *1-2 (Mass. Dec. 18, 2012). And, in 2018, a Justice of the Massachusetts Land Court found Kupperstein had made "false or misleading representations," had drafted and sent to local officials a letter making false claims, had forged a deed and submitted it to a state court, and had represented both parties to an unlawful real estate transaction. Braxton v. City of Bos., No. 17 MISC 320, 2018 WL 1221083, at *8-9 (Mass. Land Ct. 2018).[18] The circumstances presented here and the misconduct described in the other cases are especially egregious given Kupperstein's ethical obligations as an attorney and officer of the court who (per the BBO's website) remains licensed to practice law in Massachusetts.[19]

The Bankruptcy Court's orders are AFFIRMED.

SO ORDERED.

[1] The First Circuit previously recounted the series of events that led to Kupperstein's appeal. See Kupperstein v. Schall (In re Kupperstein), 943 F.3d 12, 15-19 (1st Cir. 2019). This Court incorporates that recitation by reference in its entirety and summarizes only those facts necessary to resolve Kupperstein's pending appeals.

[2] The designated record for Kupperstein's appeals to this Court appears as Document 11 on the electronic docket in Civil Action No. 18-11772. All "Doc. No." citations within this decision refer to the electronic docket in that, Kupperstein's earlier-filed, action.

[3] There also was an action in Bristol County Superior Court, brought by a person who had attempted to purchase the Norton home from Sheedy. Doc. No. 11 at 201-08. That case survived summary judgment but was later dismissed without a trial. Id. at 207. In connection with that action, Kupperstein succeeded in getting a writ of execution for $250,000 entered in his favor with respect to the Norton home. Id. That ruling was later invalidated by the Probate Court. Id. at 30.

[4] Kupperstein mischaracterizes this ruling as having "absolved [him] of any fraud in the transaction" with Thibodeau. Doc. No. 37 at 7; see also id. at 14 (claiming that fraud is "not present in this case, as the Suffolk Superior [C]ourt found"). The Superior Court, of course, did no such thing.

[5] Kupperstein accuses EOHHS of "blatant forum-shopping," saying the reason it "proceeded in both [Superior and Probate] courts is unclear." Doc. No. 37 at 5. But all one must do to discern the reason is read the Superior Court's summary judgment decision.

[6] This is not the only noteworthy thing about Kupperstein's initial bankruptcy petition. He valued the Norton home at $350,000, claimed he was the only owner (through a trust), and identified less than $8,000 in other assets. He listed neither of the two homes he apparently inhabits with his wife. He listed no assets or interest in any law practice and claimed zero dollars in monthly income, though he is a practicing attorney. With respect to creditors, he identified none with claims secured by the property he listed, ignoring MassHealth's lien on the Norton home. He listed the Estate and EOHHS as creditors with claims of "unknown" value, nowhere identifying the specific amounts of rents, fees, and other sanctions he owed pursuant to the Land Court and Probate Court orders.

Bankruptcy petitions are signed by the debtors "under penalty of perjury that the information provided is true and correct," and they warn debtors that "making a false statement [or] concealing property" can result in criminal fines and imprisonment under 18 U.S.C. §§ 152, 1341, 1519, and 3571. Kupperstein signed and dated by hand both his petition and a separate declaration directly beneath paragraphs specifying those terms. His electronic signature appears at a number of other locations on the petition and its schedules, also following paragraphs verifying the truth and completeness of the submission under penalty of perjury.

[7] EOHHS describes this as a $5,400 payment in cash, which Kupperstein pulled from his pocket in two plain white envelopes. According to EOHHS, Kupperstein claimed the money had been given to him by Sheedy, but Sheedy did not confirm his claim. It is unclear whether Kupperstein's possession of this cash, or his payment of it to the Probate Court, was disclosed to the Bankruptcy Court in March 2018. The schedules submitted with his bankruptcy petition list monthly income (his wife's wages and his own Social Security) of less than $4,000, "cash in house" of $1,500, and bank accounts holding a total of about $600.

[8] In so ruling, the Bankruptcy Court noted that Sheedy also had filed for bankruptcy, and another Bankruptcy Judge had granted stay relief to the Estate in that case to permit the same state-court actions to proceed. See Doc. No. 55-21 (granting "relief from the stay to complete the probate matters . . . including all contempt proceedings, however they are characterized," because "contempt orders followed by sanctions are governed by 11 U.S.C. section 362(b)(4) (an order of a governmental unit exercising its police or regulatory powers)," and "all court[s] have the inherent power to ensure compliance with their own orders").

[9] This Court previously dismissed Kupperstein's appeals, finding his status as a serial contemnor and a fugitive from the Probate Court disentitled him to this Court's review. Doc. No. 25. The First Circuit reversed and remanded the appeals to this Court for consideration on their merits. Doc. No. 32.

[10] This order is appealable, and this Court has jurisdiction to review it, because "it conclusively determines a discrete dispute within the larger case." In re San Miguel Sandoval, 327 B.R. 493, 505 (B.A.P. 1st Cir. 2005) (quotation marks omitted).

[11] The parties' concentration on this issue—and the First Circuit's previous characterization of the appeal—likely results from the Bankruptcy Court's citation to two cases applying that exception in its order granting stay relief, and its more substantial discussion of that exception in its order denying Kupperstein's contempt motion. Though their singular focus is understandable, it does not obligate this Court to limit its review to only that statutory exception, as it may affirm the order on appeal for any reason properly presented to the Bankruptcy Court and supported by the record. Perry v. First Citizens Fed. Credit Union, 304 B.R. 14, 17 (D. Mass. 2004). EOHHS argued at some length in its brief to the Bankruptcy Court that there was "cause" to lift the stay under § 362(d)(1), and Kupperstein responded to that argument in his brief opposing relief there as well. In re Kupperstein, No. 18-bk-10098, ECF Nos. 72, 73 (Bankr. D. Mass. June 29, 2018). This Court's close review of the underlying proceedings, including the briefing and arguments before the Bankruptcy Court and a careful parsing of the orders on appeal, leads it to take a broader view of the basis for the decision to grant stay relief.

[12] This Court's interpretation of the order on appeal is further confirmed by an interaction between the Bankruptcy Court and the lawyers at a hearing on March 11, 2020, the audio of which is available on the Bankruptcy Court's docket. In re Kupperstein, No. 18-bk-10098, ECF No. 141. At that hearing, the Bankruptcy Judge learned of Kupperstein's recent arrest on a capias issued for yet another failure to appear in Probate Court, and of the imposition (finally) of the Probate Court's thirty-day sentence for contempt. The Bankruptcy Court also was advised that there were approximately $135,000 in contempt sanctions outstanding, and that Kupperstein could purge his contempt and secure his release by paying those sanctions. Besides confirming that no actions were being undertaken in state court to collect the amount of the MassHealth lien, the Bankruptcy Judge expressed no concerns or reservations about the Probate Court's actions vis-à-vis the pending bankruptcy and his order lifting the stay.

[13] Though many courts, including the First Circuit, have interpreted the relevant exception, far fewer have considered whether and how it applies to civil contempt proceedings that arise from findings of pre-petition misconduct. The Seventh and Ninth Circuits, in decisions discussed by the parties and cited by the Bankruptcy Court here, have found such proceedings exempt from the automatic stay under § 362(b)(4) "when the proceedings are intended to effectuate the court's public policy interest in deterring litigation misconduct." In re Dingley, 852 F.3d at 1147-48; see Alpern v. Lieb, 11 F.3d at (reaching the same conclusion for sanctions, even if pecuniary, "meted out by a governmental unit, the court . . . in order to punish unprofessional behavior"). The parties have cited, and this Court has found, no other Circuit Court decisions directly addressing such circumstances. Although two bankruptcy judges in the District of Massachusetts have cited the same exception when permitting state-court proceedings to continue as to both Kupperstein and Sheedy, two other bankruptcy judges within the First Circuit have read the exception more narrowly. See In re McKenna, 566 B.R. 286, 289 (Bankr. D.R.I. 2017) (finding "proceedings to determine the imposition of sanctions and the nature of such sanctions" are exempt under § 362(b)(4), but "proceedings to enforce and collect monetary sanctions that have already been imposed" are not); In re Birchall, No. 07-bk-13232, 2007 WL 1992089, at *9 (Bankr. D. Mass. July 3, 2007) (finding civil contempt proceedings within the scope of the automatic stay after noting a split of authority among other District and Bankruptcy Courts, but explaining the stay could be lifted as to such proceedings for cause including "recovery of embezzled property").

[14] It bears noting that Kupperstein made no such motion—nor, it appears from the Bankruptcy Court's docket, lodged any complaint at all—in January 2018 (after he was jailed for an afternoon by the Probate Court the day after filing his bankruptcy petition), or in March 2018 (after he appeared in Probate Court and ultimately paid cash toward the rent he had essentially stolen by leasing a property he did not own).

[15] EOHHS also is a "governmental unit" for purposes of the police and regulatory power exception to the stay. And, it appears that EOHHS likewise has a valid, non-pecuniary purpose in seeing Kupperstein's contumacious behavior penalized, and in ensuring the regulations governing the MassHealth program are fairly administered and are not willfully circumvented or undermined to the detriment of program participants and the public at large.

[16] Even In re McKenna, a case upon which Kupperstein relies, supports a finding that these actions by the Probate Court (or by EOHHS in appearing at the relevant hearings) were within the reach of the police and regulatory power exception. See 566 B.R. at 289 (distinguishing between "proceedings to determine the imposition of sanctions and the nature of such sanctions" and those undertaken "to enforce and collect monetary sanctions that have already been imposed").

[17] Kupperstein cited 11 U.S.C. §§ 105 and 362(k) as the bases for his contempt motion in the Bankruptcy Court. The former empowers the Bankruptcy Court to do various things aimed at carrying out its duties under the Bankruptcy Code and enforcing its orders, but such actions are left to its discretion; nowhere does § 105 require a finding of, or a particular sanction for, contempt. The latter requires an award of "actual damages" and permits punitive damages where a debtor is "injured by any willful violation of a stay." § 362(k)(1). The record here does not establish a "willful" violation, nor does it establish any injury Kupperstein suffered due to EOHHS's actions (as opposed to his own repeated flouting of the Probate Court's orders).

[18] The events at issue in Braxton arose in 2015 and 2016, close in time to the events underlying this case, and they also involved efforts to purchase a property encumbered by a local tax lien after its owner had died. 2018 WL 1221083, at *3-5.

[19] The Court also observes that Kupperstein's attorney has demonstrated, in both this Court and the Bankruptcy Court, a consistent tendency to denigrate his opposing counsel, for example by criticizing the style or quality of their written submissions rather than simply challenging the merits of their legal arguments. E.g., Doc. No. 54 at 3 n.1 (accusing opposing counsel of "grammatical errors that occasionally render their argument somewhat nonsensical"); Doc. No. 11 at 126 (accusing opposing counsel of "flagrant, hyperbolic and hysterical use of adjectives" and arguing opposing counsel "so intermingled dubious factual

assertions with minimal, conclusory and incorrect assertions of law that a cogent response is nearly impossible"). Mr. Baker is a member of the Massachusetts bar, bound to conform his conduct to the Massachusetts Rules of Professional Conduct. Paragraph 4 of the Preamble to those rules admonishes lawyers to "demonstrate respect for the legal system and for those who serve it, including . . . other lawyers." Mr. Baker would do well to adhere more closely to that standard in his written and oral advocacy.

Additionally, both the Rules of Bankruptcy Procedure and the Local Rules of this Court require parties to support statements of fact in their briefs and memoranda with references and citations to the record. Fed. R. Bankr. P. 8014(a)(6), (8); D. Mass. L.R. 7.1(b)(1). Mr. Baker totally disregarded those rules. There is not a single record citation in Mr. Baker's merits brief or his reply. See generally Doc. No. 37; Doc. No. 54. This is not a mere technicality. It required the Court to scour the record itself in search of support for numerous factual representations made in the briefs, and the Court's scouring in many instances yielded record evidence demonstrating the misleading nature of the statements in the briefs. See, e.g., notes 4 and 5, supra. In the future, Mr. Baker should ensure his own compliance with the relevant rules of procedure before casting aspersions against his opponents for noncompliance with those very same rules. See Doc. No. 54 at 3 (accusing opposing counsel of failing to "include a summary of the argument as required by Fed. R. Bankr. P. 8014(b)).

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:	)	Chapter 7
	)	Case No. 18-10098-MSH
Donald C. Kupperstein	)	
	)	
Debtor	)	

ORDER ON MOTION OF THE ESTATE OF FRED W. KUHN FOR RELIEF FROM STAY

The Motion for Relief from the Automatic Stay and/or to Annul the Stay [#35] having come before me for hearing and good cause appearing therefor, it is hereby ORDERED that:

1. The motion is ALLOWED.

2. The actions presently pending in the Bristol County Probate and Family Court (Docket No. BR114P0127EA) and the Suffolk County Superior Court (Civil Action No. 2015-2036-C) may proceed in all respects, except movant may not seek to enforce against the debtor, Donald C. Kupperstein, any judgment with respect to the $191,741.79 MassHealth reimbursement claim or attempt to collect from Kupperstein all or any part thereof. In all other respects the automatic stay with respect to the aforementioned proceedings is lifted, including the assessment by either court against Kupperstein of any restitution and sanction amounts and further proceedings to enforce and collect those amounts. *See In re Dignley*, 852 F.3d 1143 (9th Cir. 2017); *Alpern v. Lieb*, 11 F.3d 689 (7th Cir. 1993).

By the Court,

Melvin S. Hoffman
U.S. Bankruptcy Judge

Dated: August 13, 2018

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:	)	Chapter 7
	)	Case No. 18-10098-MSH
DONALD C. KUPPERSTEIN	)	
	)	
Debtor	)	
	)	

ORDER ON MOTION OF DEBTOR TO HOLD THE MASSACHUSETTS EXECUTIVE OFFICE OF HEALTH & HUMAN SERVICES IN CONTEMPT AND FOR SANCTIONS

The debtor's motion to hold the Massachusetts Executive Office of Health & Human Services ("EOHHS") in contempt and for sanctions for violating the automatic stay imposed as a result of the filing of this bankruptcy case on January 11, 2018, came on for hearing before me on August 21, 2018. At the hearing, the parties agreed, and the docket in the Probate Court proceeding (Docket No. BR114P0127EA) confirms, that all proceedings in the Probate Court occurring after January 11, 2018, were initiated by the Probate Court. All proceedings involved the Probate Court's efforts to enforce its orders entered against the debtor in the nature of sanctions imposed upon the debtor for his repeated contempt of court.

A court's imposition and enforcement of a monetary sanction for contemptuous conduct is an exercise of its police power and is excluded from the automatic stay by Bankruptcy Code § 362(b)(4). *See In re Dignley*, 852 F.3d 1143 (9th Cir. 2017); *Alpern v. Lieb*, 11 F.3d 689 (7th Cir. 1993). Applicable First Circuit authority does not dictate a contrary conclusion. Mr. Baker's hearing argument that First Circuit precedent establishes that the police power exception to the automatic stay does not apply to "pecuniary matters" or "pecuniary actions" is a misstatement. The cases relied upon by Mr. Baker, including *In re Spooky World*, 346 F.3d 1 (1st Cir. 2003); *In*

re McMullen, 386 F.3d 320 (1st Cir.2004); and *In re Soares*, 107 F. 3d 969 (1st Cir. 1997) establish that the police power exemption from the automatic stay is inapplicable when the police power is exercised to further the governmental unit's "pecuniary interest" or for a "pecuniary purpose." This is a much narrower standard than the exercise of police power in connection with a pecuniary matter.

Any activity involving money is a pecuniary matter but not every activity involving money is an attempt to enforce a pecuniary interest. A court's imposition of a monetary sanction to punish misconduct and its subsequent efforts to enforce that sanction are not for a pecuniary purpose even though they involve the payment of money. *See Alpern*, 11 F.3d at 690 ("The fact that the sanction is entirely pecuniary does not take it out of section 362(b)(4)."). They are to uphold the dignity of the court and the judicial process, to punish bad behavior and to educate the public in the importance of obeying court orders. *See Chambers v. NASCO*, Inc., 501 U.S. 32, 44 (1991) (quoting *Ex parte Robinson*, 86 U.S. 505, 510 (1897); *Young v. U.S. ex rel Vuitton et Fils S.A.*, 481 U.S. 787, 798 (1987)) ("[I]t is firmly established that '[t]he power to punish for contempts is inherent in all courts . . .' This power reaches both conduct before the court and that beyond the court's confines, for '[t]he underlying concern that gave rise to the contempt power was not . . . merely the disruption of court proceedings. Rather, it was disobedience to the orders of the Judiciary, regardless of whether such disobedience interfered with the conduct of trial.'"); *Avelino-Wright v. Wright*, 742 N.E.2d 578, 582 (Mass. App. Ct. 2001) ("There is no question that both the power to sanction and the power of contempt are derived from the same source, namely the inherent power of a court to do what is necessary to secure the administration of justice . . . As such, the same act that obstructs or degrades the administration of justice or

derogates from the authority and dignity of the court may well be punishable either by contempt or by sanctions.").

As Judge Posner noted in *Alpern*:

> A litigant should not be allowed to delay the imposition of sanctions indefinitely by the expedient of declaring bankruptcy. Allowing him to do so would not only increase the number of bankruptcy filings but also create incentives for unprofessional conduct in litigation by firms or individuals teetering on the edge of the bankruptcy abyss.

Alpern, 11 F.3d at 690.

Since the actions of the Probate Court (and for that matter the Land Court and the Superior Court in related actions insofar as they too may have involved the imposition and enforcement of sanction awards against the debtor) did not violate the automatic stay, EOHHS's involvement in those actions did not violate the stay.

The motion is DENIED.

So ordered.

By the Court,

Dated: August 22, 2018

Melvin S. Hoffman
U.S. Bankruptcy Judge

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Massachusetts Executive Office of Health & Human Services
Boston, Massachusetts
for Massachusetts Executive Office of Health & Human Services