

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**

**IN RE:**

**CASE NO: 03-32158-BKC-PGH**

**JAMES F. WALKER,**

**Chapter 7 Proceedings**

**Debtor.**

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**ORDER GRANTING DEBTOR, JAMES F. WALKER' S EMERGENCY MOTION TO  
REMOVE TRUSTEE, LINDA J. WALDEN PURSUANT TO 11 U.S.C. §324 FOR FRAUD  
UPON THE COURT**

This matter came before this Court on Debtor, James F. Walker's Emergency Motion To Remove Trustee, Linda J. Walden Pursuant To 11 U.S.C. §324 [C.P. 513] ("Debtor's Motion To Remove") with evidentiary hearings conducted on October 8, 22 and 27 and November 12 and 17, 2004.<sup>1</sup>

Preliminarily, this Court emphasizes that this is a serious matter. Removal of a bankruptcy trustee is probably as serious of an action as a bankruptcy judge could possibly decide. Accordingly, any allegations that a trustee should be removed must be proven by clear and convincing evidence, not by a mere preponderance of evidence. The findings of fact that follow are not undertaken lightly.

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<sup>1</sup> On November 17, 2004, at the conclusion of the Trial on this matter, this Court entered, at the request of the Office of the United States Trustee, an Order Removing Trustee From Chapter 7 Case [C.P. 634] in order to facilitate the immediate removal of Linda J. Walden and appointment of a successor Trustee.

## **BACKGROUND**

On April 25, 2003, Debtor, James F. Walker (“Walker” or “Debtor”) filed a Voluntary Chapter 7 Bankruptcy Petition with the Clerk of the Bankruptcy Court for the Southern District of Florida (“Bankruptcy Proceeding”). Consistent with 11 U.S.C. §702, an Interim Trustee was appointed upon Walker’s filing. Pursuant to Fed.R.Bankr.P. 2003(a), the initial §341(a) Meeting Of Creditors was scheduled for June 3, 2003, however, it was continued to June 11, 2003 by agreement between Walker and the Interim Trustee.

On June 11, the continued §341(a) Meeting Of Creditors was held in West Palm Beach, Florida. Walker and his attorney, Gary J. Rotella (“Rotella”), were present. Also present were Robert S. Pettus (“Pettus”), an unsecured creditor; Carl J. Shuhi (“Shuhi”), president and sole shareholder of Florida Precision Calipers, Inc. (“Florida Precision”), an unsecured creditor; Mary Alice Gwynn, Esquire (“Gwynn”), attorney for unsecured creditors Florida Precision and Eleanor C. Cole (“Cole”); and Robert A. Angueira, Esquire (“Angueira”), also an attorney for Florida Precision and Cole. Cole was not present.

After the §341(a) Meeting Of Creditors was called to order, Angueira announced that creditors Florida Precision and Cole were calling an election to elect a permanent Chapter 7 Trustee. Angueira was in possession of two (2) notarized General Power Of Attorney forms in favor of Gwynn, from Creditors Cole and Florida Precision. The United States Trustee then inquired whether there were any nominations for permanent trustee. Angueira referred to the two Ballots tendered to the United States Trustee, both naming Linda J. Walden (“Walden”). Walker objected to Walden becoming Chapter 7 Trustee.

On June 12, 2003, Walden signed, under oath and penalty of perjury, a Verified Statement To Accompany United States Trustee's Report Of Disputed Election Under Bankruptcy Rule 2007.1(b)(3)(B) ("Verified Statement"), which recites in relevant part:

"I, LINDA J. WALDEN, the undersigned, hereby state the following under penalty of perjury, 18 U.S.C. Section 1001, in connection with the pending trustee election in this case:

I have the following connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee for Region 21, and/or any person employed in the Office of the United States Trustee: NONE except as disclosed herein:

1. I was appointed and currently serve as State Court Receiver for the Creditors in the matter styled Eleanor C. Cole, Plaintiff, v. James F. Walker, Defendant Case No. 89-21462-09 before the Honorable Circuit Court Judge Andrews currently pending and stayed in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County."

On June 17, 2003, the United States Trustee filed United States Trustee's Report Of Disputed Election Of Chapter 7 Trustee Pursuant To 11 U.S.C. §702 ("Report Of Disputed Election") which explained, in detail, the election process and reflected that if Walker had not objected, Walden would be elected. The Report Of Disputed Election with Walden's Verified Statement appended thereto was admitted into evidence as Debtor's Exhibit Z.<sup>2</sup>

On June 20, Angueira filed, on behalf of Florida Precision and Cole, a Motion To Resolve The Report Of Disputed Election And To Ratify The Election Of Linda Walden As Permanent Chapter 7 Trustee. On July 9, a hearing was held before this Court to resolve the disputed election.

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<sup>2</sup> All of the Exhibits referred to herein have been admitted into evidence.

At that hearing, Walker called Walden to the witness stand and inquired into her relationship with Shuhi, the sole officer and shareholder of Florida Precision. Walden testified that she had known Shuhi for approximately one (1) year and that she didn't have any business or personal connections with Shuhi, other than she had acted as the State Court Receiver for all of Walker's creditors in the matter styled *Eleanor C. Cole v. James F. Walker*, In The Circuit Court Of The Seventeenth Judicial Circuit, In And For Broward County, Florida, Case Number 89-21462 (09) ("Receivership Proceeding"). Specifically, Walden testified:

"Q. [BY ROTELLA]: Have you rendered services on Mr. Shuey's (*sic*) behalf for any of his entities?

A. [WALDEN]: No. I do not do personal work for Mr. Shuey (*sic*).

Q. Have you received any money in any form from Mr. Shuey (*sic*) at any point in time?

A. Mr. Shuey (*sic*) does not pay me.

Q. Has Mr. Shuey (*sic*) given you any money at any point in time?

A. Mr. Shuey (*sic*) has not given me money."

See July 9 Hearing Transcript admitted into evidence as Debtor's Exhibit MM, Page 56, Lines 5 through 13.

**"Q. [BY ROTELLA]: What is your business relationship with Mr. Shuey (*sic*), none?**

**A. [WALDEN]: I do not have a direct business relationship with Mr. Shuey (*sic*), other than the fact he is a creditor in this particular case, and I have met with Mr. Shuey (*sic*) to get information in the receivership.**

Q. In the receivership, you've met with Mr. Shuey (*sic*) to get information in the receivership. Under the receivership order, aren't

you the fiduciary of Eleanor C. Cole?

A. I am the fiduciary of - - I was appointed the receiver for Ms. Cole and the creditors.

Q. So when you say you don't have any direct business relationship with Mr. Shuey (*sic*), do you have some indirect business relationship?

A. As I said, I was the appointee for the creditors.

**Q. Do you render any services for any of Mr. Shuey's (*sic*) business entities?**

**A. No. I believe I answered that question.**  
(Emphasis added.)

*Id.* at Page 57, Lines 3 through 22.

Based upon Walden's sworn testimony that she had no relationship with Shuhi, and other relevant criteria, this Court ratified Walden to serve as Walker's Chapter 7 Trustee.

In sum, Walker has alleged two (2) bases to remove Chapter 7 Trustee Walden. First, Walker alleged that Trustee made a false statement in her June 12, 2003 Verified Statement wherein she allegedly did not disclose any relationship or "connection" with Shuhi, as sole corporate officer and shareholder of Florida Precision, the second largest creditor in Walker's Chapter 7 Proceedings, other than pertaining to the Receivership Proceeding.

Rule 2007.1(b)(3)(B), in pertinent part, requires in a disputed election (as was the case in Walker's Bankruptcy Proceedings) that the United States Trustee file a report and, quoting subsection (b):

“[T]he report shall be accompanied by a verified statement by each candidate elected under each alternative presented by the dispute,

setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, United States trustee, and any person employed in the office of the United States trustee".

The plain language of Bankruptcy Rule 2007.1(b) does not limit such "connections" to present or past.

The second general set of Walker's allegations relate to Walden's alleged perjury in deposition and live testimony before this Court regarding the alleged relationship between she and Shuhi. Walker's attorneys point to two (2) categories of evidence which they assert prove that Trustee had a business relationship with Shuhi commencing in 1999, or thereabouts. First, Walker alleged facts that demonstrate Walden acted as Shuhi's expert witness and accountant in a State Court action, to wit: *Florida Caliper Manufacturers, et. al. v. Alan Richard Simon et al.*, In The Fifteenth Judicial Circuit, In And For Palm Beach County Florida, Case Number 501998CA010597 ("FCM Civil Case"). Second, Walker alleged facts that demonstrate that Trustee was the Registered Agent for companies owned and controlled by Shuhi in 2001 and thereafter.

### **FINDINGS OF FACT**

On October 27, during the Trial on this matter, this Court carefully defined the issues relative to Walden's removal as follows:

"What's relevant is whether she has lied before the Court as to her representation of Mr. Shuhi, either in the corporate matters, where she is registered agent, or whether she had a business relationship with Mr. Shuhi in the state court action."

*See* October 27, 2004 Hearing Transcript, Page 65, Lines 10 through 15.

Walden has repeatedly testified in dozens of instances during this Trial, at prior hearings and

throughout her deposition that she had no relationship with Shuhi prior to 2002 other than, in essence, a very casual passing of Shuhi in professional offices wherein she shared space with Eric S. Glatter, Esquire (“Glatter”), who represented Shuhi in matters unrelated to the FCM Civil Case. For example, Walden testified in her October 20, 2004 deposition relative to her relationship with Shuhi:

“Q. [BY ROTELLA]: Have you ever been employed -- have you ever been an employee of Carl Shuhi or any of his entities?

A. [WALDEN]: No, I have never been an employee of Carl Shuhi or any of his entities.

Q. Have you ever worked for Carl Shuhi or any of his entities?

A. I have never worked for Carl Shuhi or any of his entities.

Q. You previously testified that you have never been retained by Carl Shuhi or any of his entities; is that correct?

A. I do not know if that was my testimony; however, I have not been retained by Carl Shuhi or any of his entities.

Q. And you have never rendered any services, as I suppose is both your testimony and Carl Shuhi’s testimony as of October 8th for Carl Shuhi or any of his entities, correct?

A. As of October 8th, I have never rendered any services for Carl Shuhi - -

Q. Or any of his entities?

A. - - or any of his entities.”

*See Debtor’s Exhibit NN, Deposition of Walden, Page 40, Lines 12 through 25 and Page 41, Lines 1 through 9.*

“Q. [BY ROTELLA]: However, you never met him until the end of

2002, that being I'm going to call it receivership time.

A. [WALDEN]: I do not know that I testified to the exact time I met him.

Q. Okay. Tell me when you met him.

A. I don't know the exact year that I met him, but it would have been - - I mean, actually met him, it would have been during the receivership - pre-receivership."

*Id.* at Page 44, Lines 20 through 25, Page 45, Lines 1 through 4.

"Q. Did you ever sit with Mr. Shuhi and discuss the -- did you ever meet with Mr. Shuhi or speak with Mr. Shuhi by telephone and discuss the matter of Florida Caliper Manufacturing versus Alan Richard Simon?"

*Id.* at Page 47, Lines 23 through 25, Page 48, Lines 1 through 2.

"THE WITNESS [WALDEN]: Okay. I do not believe that I met with Mr. Shuhi regarding that.

Q. [BY ROTELLA]: Okay. Did you ever speak with him by telephone regarding that case?

A. I do not believe I spoke with Mr. Shuhi regarding that case.

Q. So, to complete the circle, you have never performed any services for Carl Shuhi or any of his entities other than as you swear in the verified Statement to accompany United States trustee's report of disputed election under bankruptcy rule 2007.1(b)(3)(B), other than your role in the receivership, correct?

A. I have not performed services for Mr. Shuhi.

Q. Or any of his entities?

A. Or any of his entities. I have explained the Vicki Bravendar/Utrecht situation clearly.

Q. So, that we're clear and I'll leave this for always. To this day, you've had no business or personal relationship with Carl Shuhi or any of his entities other than your role in the state court receivership matter and now the bankruptcy matter, correct?

A. As I've stated, I have not had any relationship."

*Id.* at Page 48, Lines 12 through 25, Page 49, Lines 1 through 13. [Emphasis added].

On October 27, 2004, Walden testified that the extent of her relationship with Shuhi was limited to merely seeing Shuhi in Glatter's office:

"Q. [BY ROTELLA]: What was Mr. Utrecht doing or not doing that you are referring to here?

A. [WALDEN]: It appeared continually that Mr. Utrecht was trying to use the work that I was putting together for Ms. Bravender, the report, and use it for his other client, Mr. Shuhi.

Q. Whom you did not know at the time?

A. At which time?

Q. In 2000.

A. No, I said that I saw Mr. Shuhi come into Mr. Glatter's office.

Q. But you didn't know him, you had never done any business with him?

A. I had never done any business with him, that is correct.

Q. You have never done any business with him?

A. That is correct."

*See* October 27, 2004 Hearing Transcript, Page 27, Lines 4 through 9.

Consistent with Walden's testimony, Shuhi testified during this Trial on October 8, 2004

that he had no relationship, business or personal, with Walden until October, 2002. On October 8, Shuhi testified as follows:

“Q. [ROTELLA]: You testified that you first met Ms. Walden around the time of Ms. Gwynn’s engagement by Ms. Cole, which would be October, 2002; correct?”

“A. [SHUHI]: I don’t know. If you say it’s October, then it is.”

“Q. So you didn’t know who Ms. Walden was in March 19 of ‘01?”

“A. At that point, no.”

*See* October 8, 2004 Hearing Transcript, Page 32, Line 4 through 20.

“Q. [BY ROTELLA]: How long have you known Ms. Walden?”

A. [SHUHI]: Actually known her since about 2002.

Q. And when would that be in 2002, do you remember?

A. No, I do not recall. It had something to do with Eleanor Cole’s case.

Q. You didn’t know her before Eleanor Cole’s case; is that correct?

A. I may have known of her name, but I have not ever met her personally.”

*Id.* at Page 26, Lines 4 through 13. [Emphasis added].

Entirely inconsistent with his testimony before this Court, Shuhi testified in the FCM Civil Case five (5) years ago that Walden was, in fact, the expert witness in that matter and both his personal and business accountant. Specifically, Shuhi testified on June 28, 1999 as follows:

“Q. [DEFENDANTS’ COUNSEL]: Does Florida Caliper Manufacturers file corporate tax returns?”

A.[SHUHI]: Yes.

Q. Who files the tax returns, or who prepares them?

A. CPA.

Q. What's the name of the present CPA?

A. **Linda Walden**.

Q. W-A-L-D-E-N?

A. I believe so.

Q. And where is she located?

A. Boca Raton.

Q. Is she with a company?

A. **Walden and Associates**.

Q. And how long has Miss Walden been doing the corporate tax returns?

A. Less than a year.”

*See Debtor's Exhibit I, Shuhi's June 28, 1999 Deposition Transcript, Page 15, Lines 24 through 25; Page 16, Lines 1 through 15. [Emphasis added].*

“Q. [DEFENDANTS' COUNSEL]: Do you file personal tax returns every year?

A. [SHUHI]: Yes. My CPA does the work.

Q. Who is your personal CPA?

A. **Linda Walden**.

Q. How long has Miss Walden been preparing your tax returns?

A. Less than a year.

Q. Have you had any other CPAs for your own personal tax returns other than Ms. Walden and Mr. Bushco?

A. None that I can recall.”

*Id.* at Page 18, Lines 4 through 15. [Emphasis added].

“Q. [DEFENDANTS’ COUNSEL]: Do you have a total for the amount of damages that you claimed have resulted from three matters involving the same subject matter being pursued separately?

A. [SHUHI]: I’d have to refer that to my accountant.

Q. And who is your accountant for this purpose?

A. **Linda Walden**.

Q. Has Ms. Walden been retained at this point to provide any testimony or calculate any damages with regard to this litigation?

A. Yes.”

*Id.* at Page 134, Lines 1 through 12. [Emphasis added].

The alleged facts indicating that Trustee represented Shuhi in the FCM Civil Case are established from several sources. First is the testimony of Steven T. Utrecht, Esquire (“Utrecht”). Utrecht testified that he represented Shuhi relative to his entities’ claims against Simon & Simon Charter Attorneys, P.A. (“Simon Law Firm”) in the FCM Civil Case. Utrecht testified that he needed an expert witness and that Shuhi represented to him that Walden would fill that role and hired her. Utrecht testified that he met, spoke and corresponded with Walden several times in connection with the FCM Civil Case and that she was Shuhi’s entities’ expert witness.

Secondly, Steven W. Gomberg, Esquire (“Gomberg”), Utrecht’s successor as attorney of

record for Shuhi's entities in the FCM Civil Case, received the expert witness report from Shuhi, which is attached to Debtor's Exhibit TT, Plaintiffs' Notice Of Filing Unverified Supplemental Response To Interrogatories, and that he believed was prepared by Walden.

Third, Shuhi testified at two (2) separate depositions in 1999 in the FCM Civil Case that Walden was his personal and business accountant, as well as his entities' expert witness.

However, before this Court on October 8, Shuhi stated, under oath, that when he testified in 1999 in the FCM Civil Case that Walden was his expert witness and accountant, he did so because Utrecht told him that was the case. This is directly contradicted by Utrecht's testimony before this Court. Shuhi testified on November 17 in these Proceedings that Utrecht, and not Shuhi himself, retained Walden as the expert witness for his entities in the FCM Civil Case and that Walden was his accountant, as well, but that he never paid her anything.

Fourth, Debtor's Exhibit TT is Plaintiffs' Notice Of Filing Unverified Supplemental Response To Interrogatories in the FCM Civil Case. Appended to Debtor's Exhibit TT allegedly is the expert report of Walden along with the Simon Law Firm's invoices to Shuhi's entities on various litigation matters attached as exhibits and referenced in the four (4) substantive pages of Walden's report. However, Trustee testified during this Trial, and previously at prior hearings, that the report in question, which she did admit preparing, was prepared for Vicki Bravender ("Bravender"), Shuhi's secretary, and not for Shuhi's entities in the FCM Civil Case.

In further support of her position, Trustee produced at her October 20, 2004 deposition what became Debtor's Exhibit SS which contains the exact same four (4) substantive pages of her expert report found in Debtor's Exhibit TT, but contained a cover page indicating that the report was

prepared for Vicki Bravender and also contained a ledger produced by the Simon Law Firm regarding time spent on the matter styled *Vicki Bravender v. State Farm Mutual Automobile Insurance Company*, In The Circuit Court For The Fifteenth Judicial Circuit, In And For Palm Beach County Florida, Case Number: 501996CA001488 (“State Farm Matter”). The Bravender State Farm Matter ledger is not referenced in the four (4) substantive pages of Walden’s expert report.

In her October 26, 2004 deposition, Bravender produced yet another version of Walden’s expert report which was admitted into evidence as Debtor’s Exhibit RRR. Debtor’s Exhibit RRR contained the Bravender cover page, the Bravender ledger in the State Farm Matter, Shuhi’s entities invoices that are referenced as exhibits in the expert report and a spread sheet analyzing the Simon Law Firm’s handling of various Shuhi litigation which is not referenced in Walden’s expert report. Each of the three versions of Walden’s expert report each contain the identical four (4) page substantive expert report.

As to Walker’s allegations that Trustee acted as the Registered Agent for several of Shuhi’s various entities, Trustee testified that she did sign several Uniform Business Reports filed with the Florida Secretary of State, Division Of Corporations as the Registered Agent for at least two (2) of Shuhi’s entities, i.e. Florida Caliper, LLC (“Florida Caliper”) and Royal Crest Farms, LLC (“Royal Crest”). However, Trustee claims she should not have been listed as the Registered Agent for Florida Caliper while Shuhi owned that entity. Trustee testified that at some point in time Glatter was supposed to change the managing member of Florida Caliper from Shuhi to Bravender as ownership of that entity was purportedly given to Bravender from Shuhi. Trustee admits Bravender was her client and that she was appointed to act as the Registered Agent for that company on behalf

of Bravender. There was no evidence presented to indicate that Royal Crest was sold or otherwise given to Bravender from Shuhi.

Bravender, who was Shuhi's secretary for a long period of time, testified that she was the transferee of Florida Caliper, which changed its name subsequently to Globe Centurion, LLC ("Centurion") and that she never owned any other companies. Bravender testified that she contacted Utrecht to represent her in a potential claim against the Simon Law Firm. Utrecht acknowledged that he did have discussions with Bravender regarding her pursuit of potential claims against the Simon Law Firm, but that he never undertook formal representation of her in such regard.

There is no dispute there was never any formal lawsuit commenced on behalf of Bravender against the Simon Law Firm or that Utrecht filed a lawsuit against the Simon Law Firm on behalf of Shuhi's entities as Plaintiffs, one of which was Florida Precision, the second largest creditor in Walker's Chapter 7 Bankruptcy Proceedings.

Bravender testified that the Simon Law Firm handled several matters for her. Bravender claimed that she did not get the proper percentage of a settlement from the Simon Law Firm in a personal injury case referred to as the "Beaver Properties" matter; meaning that the law firm received forty percent (40%) instead of thirty three and one-third percent (33 1/3%), and that she should have received sixty six and one-third percent (66 1/3%) instead of sixty percent (60%). Pursuant to the settlement in that personal injury matter, in which Bravender and Shuhi were co-plaintiffs, there was no deduction for Bravender's costs since all of the expenses were paid by Shuhi, as reflected in the Beaver Properties Settlement Statement admitted into evidence as Debtor's

Exhibit MMMM.

Bravender also testified that she retained Utrecht in a cause of action against the Simon Law Firm based upon their contingency fee based representation of her in the State Farm Matter. However, in that case, Bravender did not receive any recovery which could flow through the Simon Law Firm trust account because she did not accept an offer of judgment after which attorneys' fees and costs were assessed against her. Bravender's claims would then be against the Simon Law Firm related to that firm's alleged failure to properly advise her as to the offer of judgment by State Farm. Bravender does claim that an expert report was prepared for her relative to her claims against the Simon Law Firm.

In rebuttal to Walden and Shuhi's testimony that they never had any relationship or connection until 2002, Elaine M. Gatsos, Esquire ("Gatsos") testified that she represented Shuhi and that such representation began with a referral and introduction by Trustee. In fact, Gatsos testified she met, in person, with both Walden and Shuhi on February 26, 1999 at Shuhi's Delray Beach office for an initial client meeting. Gatsos also testified that during various meetings, Walden repeatedly mentioned that she was filling out answers to expert interrogatories related to a cause of action for Shuhi being handled by Utrecht.

Walden, in sur rebuttal to Gatsos' testimony, again testified that she never had any connection with Shuhi, and that, in essence, Gatsos, Utrecht and Gomberg were not telling the truth.

In determining the credibility of witnesses, the Court looks to the three (3) criteria: extrinsic evidence, the demeanor of witnesses and motivation of the witness.

Going to the extrinsic evidence first, looking at Debtor's Exhibits SS, TT and RRR, the three

(3) versions of Walden’s expert report only deal with Walden’s analysis of Shuhi invoices from the Simon Law Firm and the Shuhi issues handled by the Simon Law Firm. There is no mention of Bravender. Bravender admitted that the expert report has nothing to do with her lawsuit or her claims against the Simon Law Firm. Significantly, each of the three (3) versions of Walden’s expert report contain the identical four (4) page substantive findings and therein there are two (2) references to a “client”, and both references reference a male instead of a female, to wit:

“It appears that Alan Richard Simon began as a solo practitioner at the initial representation of the client and his various entities.”

Page 2, Subparagraph (b). [Emphasis added].

“The client has indicated that there are balance forwards of invoices showing amounts due when in his possession and then showing zero balances after credits are applied when faxed over from the law firm.”

Page 3, Subparagraph (g). [Emphasis added].

Again, this is additional evidence that the expert report was prepared for Shuhi in conjunction with the FCM Civil Case and not for Bravender for whom no lawsuit was ever filed against the Simon Law Firm.

The invoices that are attached to Debtor’s Exhibit TT are invoices from the Simon Law Firm to Shuhi, not to Bravender. Both of the potential claims Bravender testified to having had against the Simon Law Firm would not deal with billing practices, they would deal with either a contract, i.e. the retainer agreement between the Simon Law Firm and Bravender which would indicate what percentages of the settlement should have been received, or a malpractice claim against the Simon Law Firm based upon the alleged misadvice to Bravender concerning rejection of the offer of

judgment. The expert report itself would be completely useless on any claims Bravender had against the Simon Law Firm.

This Court notes, in reviewing Debtor's Exhibits SS and RRR versus Debtor's Exhibit TT, that the cover page of the former Exhibits does reflect the report was prepared by Walden for Bravender. And, although this Court is not a document expert, this Court does have experience, as a former Assistant United States Attorney and sitting on the bench, and it is clear to this Court that the cover page on Debtor's Exhibit SS and Debtor's Exhibit RRR was prepared either on a different typewriter or a different computer than the report appended to Debtor's Exhibit TT. Examining the cover page of Debtor's Exhibits SS and RRR, the letters on the cover page do not have hooks on the ends of the letters, while the letters in the body of the expert report itself do have hooks on the ends. Therefore, it is clear to the Court that the cover page of these Exhibits was not prepared contemporaneously with the expert report and that this was an effort, orchestrated by Walden, to conceal the fact that the initial expert report was really prepared for Shuhi.

In addition, critical to the Court's findings are Debtor's Exhibits KKK-1 through KKK-31 which were produced by Utrecht under Subpoena Duces Tecum In Bankruptcy A Proceeding and originally produced to this Court under privilege log. Noteworthy, any and all of Shuhi's attorney-client privilege assertions as pertaining to documents produced by Utrecht, Gomberg and Gatsos were denied under the crime-fraud exception to the attorney-client privilege. Those documents evidence a history between Utrecht, Shuhi and Walden and demonstrate to this Court that Walden was retained as the expert witness in the FCM Civil Case.

Going through Debtor's Exhibits KKK-1 through KKK-31, the following are just a few of

the obvious points that the Court takes into consideration in making this finding. Debtor's Exhibit KKK-1 is the first correspondence to Utrecht from Shuhi dated January 6, 2000 and it gives a general background, references "Simon & Simon case" and focuses on financial damages and accounting. In it, Shuhi writes: "That is the reason accounting experts have been hired". The only accounting expert in the FCM Civil Case was Walden.

Debtor's Exhibit KKK-2 is a facsimile correspondence, dated January 6, 2000, to Utrecht from Shuhi. In it, Shuhi states: "Linda Walden said she needs to testify at this upcoming fraud hearing". The testimony is clear that there were allegations in the FCM Civil Case that the case should be dismissed based upon alleged fraud upon the court, specifically the doctoring of documents by Shuhi in formal discovery to benefit his claims. It is also clear that this correspondence relates to the FCM Civil Case and it expressly references Walden, the Trustee.

Debtor's Exhibit KKK-3, dated January 19, 2000, is a facsimile correspondence on Walden & Associates letterhead to Shuhi from Walden referencing "Fl. Calipers v. Simon". In Walden's own communication she references "Fl. Calipers", not Bravender. This correspondence to Shuhi, with a carbon copy to Utrecht for his information, states: "While we have an analysis you sent over for payments out we need the ledgers of source documents for prior to 1996". Clearly, Walden is working for Shuhi in the FCM Civil Case.

Debtor's Exhibit KKK-4B, dated January 20, 2000, is a facsimile correspondence to Walden from Utrecht, wherein Utrecht discusses pre-marking exhibits. The reference on Utrecht's correspondence is "Carl J. Shuhi v. Alan Richard Simon, et al." As a side note, Utrecht oftentimes does interchange Shuhi and Florida Caliper in his various correspondence, however, at no point does

he reference Bravender. Importantly, there is a hand-written note of that same date at the foot of Debtor's Exhibit KKK-4B to Utrecht from Walden. Here, Walden handwrites:

“I am awaiting source documents from the client as the client wants the exhibits to be enhanced. Until I receive those documents, I am on hold. I expect them today. Linda”

Clearly, this is a response directly to the prior correspondence dated January 19, 2000 (Debtor's Exhibit KKK-3) wherein Walden discusses the need for the ledger of source documents for prior to 1996.

Debtor's Exhibit KKK-5, dated January 20, 2000, is a facsimile correspondence to Shuhi from Utrecht referencing “Shuhi v. Simon et al.”, wherein Utrecht discusses an upcoming hearing which, again, ties into the previous correspondence and Exhibits that would be necessary for this upcoming hearing. Utrecht writes, again: “I expect Linda's accounting to be done a long time before then”, meaning before the hearing on the Motion To Dismiss For Fraud. Debtor's Exhibit KKK-5 evidences a clear understanding by Utrecht that Walden was the expert witness being used by Shuhi in the FCM Civil Case. At no point throughout any of this does Walden say, wait a minute, I'm not the expert witness here.

Debtor's Exhibit KKK-6 is a correspondence, dated January 24, 2000, to Utrecht from Shuhi referencing “Simon & Simon”. Even though Shuhi testified that someone else retained Walden, Shuhi states here that: “I have reviewed the flow chart provided by our accountant”. This is yet another acknowledgment by Shuhi that Walden was his accountant.

Debtor's Exhibit KKK-7 is a facsimile correspondence, dated February 1, 2000, to Shuhi from Utrecht referencing “Shuhi v. Simon et al.” wherein Utrecht writes: “I merely wish to point

out that Linda Walden's work up indicating that over \$300,000 is owed is not an opinion that she can vouch for in Court". Clearly this evidences that Utrecht believed Walden was Shuhi's expert in the FCM Civil Case.

Debtor's Exhibit KKK-8 is a facsimile correspondence, dated February 2, 2000, to Utrecht from Shuhi, which states in relevant part: "I spoke with Linda Walden this morning and she suggests the three of us meet to formulate a settlement strategy". Again, Utrecht and Shuhi believed that Walden was Plaintiffs' expert witness in the FCM Civil Case. When asked about Debtor's Exhibit KKK-8, Shuhi's explained:

"Q. [BY ROTELLA]: You say here, I spoke with Linda Walden this morning and she suggested that the three of us meet to formulate a settlement strategy, correct?

A. [SHUHI]: I certainly did write that, yes.

Q. How do you write that when you said you never spoke to Linda Walden until October, 2002, how does that happen?

A. That's correct. I wanted to force the issue, and I said that since we were maintaining a strict separation, I wasn't to contact the expert directly. Given the letter he sent a day or two before, which was extremely odd, I said well, there's something strange here, so I threw that out. The meeting never occurred, none of the meetings occurred. I never got to see much of Steven Utrecht, and I did not get to see the expert."

This Court is convinced that Shuhi was being untruthful in his November 12 answer.

Debtor's Exhibit KKK-9 is a correspondence dated February 21, 2000 to Utrecht from Shuhi referencing "Simon & Simon" wherein Shuhi writes: "We have everything we need from our accountant; she has expressed...", not "he", "...she has expressed to me she covered the major

portion of work already with you”. [Emphasis added]. Utrecht testified that he met and spoke by telephone with Walden to discuss her proposed testimony and what he required from her. This Court finds that his testimony is honest and true evidence of the relationship by and between Walden and Shuhi.

Debtor’s Exhibit KKK-10 referencing “Carl J. Shuhi v. Alan Richard Simon et al.”, is a facsimile correspondence, dated March 6, 2000, to Walden from Utrecht. It states, in pertinent part: “In the event you may be a witness, please fill out the appropriate blanks and return same to me at your earliest opportunity so we can complete these interrogatories”. The Expert Witness Interrogatories are Debtor’s Exhibit KKK-18 and will be discussed more at length hereinbelow.

Debtor’s Exhibit KKK-11 is a facsimile correspondence sheet, dated March 17, 2000, to Shuhi from “Barbara” at Utrecht’s office referencing “Shuhi vs. Simon” wherein Barbara writes:

“Let me know as soon as possible where we stand on these Interrogatories and Production. Linda was to have gotten back regarding Interrogatories and I have not heard from her or seen anything to date. Mr. Utrecht is expected back from vacation next week.”

This correspondence further establishes that it is Utrecht’s office’s belief that Shuhi has the contact with Walden, not vice versa.

Debtor’s Exhibit KKK-12 is a facsimile cover sheet, dated March 20, 2000, to Walden from Utrecht referencing “Shuhi vs. Simon”, not “Bravender v. Simon”, from Utrecht, wherein Utrecht is asking Walden:

“Please advise immediately as to when we can expect to receive your response to the Interrogatories faxed to you several weeks ago. There are becoming due shortly. Thanks.”

Clearly, Walden was Shuhi's entities' expert witness.

Debtor's Exhibit KKK-13 is a copy of the same facsimile cover sheet (Debtor's Exhibit KKK-12), only with Walden's handwritten response at the foot stating: "Welcome back. They're in our office, I will fax them to you tomorrow afternoon". The response does not say that the Answers to Bravender's Interrogatories are ready. The reference is "Shuhi v. Simon". Again, at no point does Walden say I don't represent Shuhi.

Debtor's Exhibit KKK-14 is a facsimile correspondence, dated March 22, 2000, to Utrecht from Shuhi wherein he writes: "Linda will fax to you her ans. to interr. But - I think we should first send interr. to their expert - Before we send over our answers". Unquestionably, Walden is Shuhi's entities' expert witness in the FCM Civil Case.

Debtor's Exhibit KKK-15 is a handwritten correspondence, dated March 24, 2000, to "Barbara/Steve Utrecht" from "Kat/Linda Walden", referencing "Shuhi Interrogatories", not "Bravender's Interrogatories". Barbara, the paralegal within Utrecht's office, writes in relevant part:

"Client instructed Ms. Walden by fax yesterday to not deliver interrogatories. Ms. Walden has the interrogatories ready but is waiting for further client instructions. This fax sent by instructions of Ms. Walden."

This ties directly back into Shuhi's statement in Debtor's Exhibit KKK-14 that he wanted to see the opposing party's expert interrogatories before he answers their interrogatories.

Debtor's Exhibit KKK-16 is a facsimile correspondence, dated March 27, 2000, to Shuhi from Utrecht reciting that Walden: "...has still not faxed the answers to interrogatories, please get us the information immediately". Again, this memo establishes Utrecht's clear understanding that

Walden was the expert witness.

Debtor's Exhibit KKK-17 is a facsimile cover sheet, dated March 6, 2000, to Walden from Utrecht. At the foot is Walden's hand-written note to Utrecht stating: "Please review attached. If you need additional info please advise. Otherwise we'll type and forward to you." Walden is referring to the hand-written Answers To Expert Witness Interrogatories in "Shuhi vs. Simon", not "Bravender vs. Simon", for which there was never any such lawsuit filed.

Debtor's Exhibit KKK-18 is clearly what Walden was referring to in Debtor's Exhibit KKK-17 which are the hand-written Answers To Expert Witness Interrogatories. These Interrogatories and Answers relate to the Motion To Dismiss in the FCM Civil Case for fraud upon the court and clearly indicate that Walden was Shuhi's entities' expert witness. Again, Bravender had no pending action and, as such, there would be no interrogatories for Bravender to answer.

Debtor's Exhibit KKK-19 is the Notice Of Furnishing Answers To Interrogatories which appends the typed Answers To Expert Interrogatories which Shuhi signed under oath and penalty of perjury on March 31, 2000, which, again, establish that Walden was Shuhi's expert witness in the FCM Civil Case.

All of these Exhibits referenced above, and several more for that matter, clearly and convincingly evidence that Walden knew she was considered the expert witness for Shuhi's entities and that she was retained by either Shuhi or Utrecht in that litigation. Walden should have disclosed these connections in her Verified Statement executed under oath and penalty of perjury on June 12, 2003, notwithstanding whether she was retained by Shuhi or Utrecht.

As to Bravender, again, all the evidence establishes that she was testifying falsely. Nothing

in Debtor's Exhibit SS, TT or RRR relates to her case(s). In all three (3) versions of Walden's expert report, as already discussed, there are two (2) references to the client being a male and references that the client had entities. Moreover, Bravender testified she only had one (1) company, Florida Caliper, which changed its name to Centurion, if, in fact, she owned that company at all. In all events, she had no "entities" which is further evidence that Walden's expert report was prepared for Shuhi's entities as Plaintiffs in the FCM Civil Case.

As to motive, Utrecht had no motive to testify falsely before this Court. There's no dispute that the documents produced by Utrecht, all of which this Court reviewed and admitted into evidence, were authentic and all supported his contention that Walden was retained by Shuhi in the FCM Civil Case as Plaintiffs' expert witness.

Likewise, Gatsos had no motive to testify falsely before this Court. Gatsos still has a high opinion of Walden even though, as she also testified, Shuhi attempted to physically intimidate her outside of this courthouse on November 12, 2004. This Court finds that Gatsos' testimony was completely credible.

As to Shuhi, he had no motive to testify falsely back in 1999 in the FCM Civil Case wherein he testified that Walden was the expert witness for his entities in that matter and, as well, both his personal and business accountant as recited hereinabove.

This Court does find that Shuhi testified falsely throughout these Proceedings. It is clear that Shuhi supports Walden and the motive for lying before this Court is his support for Walden.

As for Walden's motive, she obviously has several motives to lie before this Court. First, Walden wishes not to be removed. Second, Walden was the State Court Receiver involving the same

Debtor and waived any fee due in the Receivership Proceeding in order to become Trustee. Recoupment of her fees is a second motivation to testify falsely here.

Finally, as to the demeanor of the witnesses, this Court found that Utrecht, Gomberg and Gatsos' demeanors to be completely consistent with telling the truth. This Court finds Walden and Shuhi's demeanors to be inconsistent with telling the truth and also finds that their body postures and facial expressions are inconsistent with telling the truth.

This Court finds beyond clear and convincing evidence that Walden failed to disclose that she was retained by Shuhi as an expert witness in the FCM Civil Case and thereafter lied in dozens of instances in an intentional effort to prevent this Court from learning the truth.

As to the corporate records, this Court finds that Walden was the Registered Agent for Shuhi's entities, as is represented in the documents marked Debtor's Exhibits A through E, and that this information should have been disclosed in the Verified Statement. This Court does not find Walden's testimony that she signed those Uniform Business Reports with the understanding that Glatter was to remove her as Registered Agent to be truthful. It flies in the face of, number one, Shuhi signing the documents under oath and penalty of perjury before she signed them; and, number two, it flies in the face of Debtor's Exhibit E, which evidences that Walden was Centurion's registered agent until July, 22, 2003, two weeks after the July 9, 2003 Disputed Election Hearing wherein Walden testified under oath that she had no connections with Shuhi.

This Court finds by clear and convincing evidence that the Trustee failed to disclose that she was retained by Shuhi as an expert witness in the FCM Civil Case; that she acted as his accountant or that she was the registered agent for companies controlled by Shuhi; and, that she lied throughout

these proceedings in a continuing effort to prevent this Court from learning the truth. This Court also finds that Walden failed to disclose, under oath, her relationship with Shuhi under oath in her Verified Statement and that she failed to testify truthfully before this Court throughout these proceedings regarding such relationship in a continuing effort to prevent this Court from learning the truth.

### CONCLUSIONS OF LAW

11 U.S.C. §324 provides in relevant part:

The court, after notice and a hearing, may remove a trustee, other than the United States trustee, or an examiner, for cause.

Courts interpreting 11 U.S.C. §324 hold that removal of a trustee is to be examined on a case by case basis. *In re Haugen Construction Service, Inc.*, 104 B.R. 233, 240 (D.N.Dakota 1989). However, courts specifically have determined that cause exists warranting removal in the case of fraud, actual injury and/or breached of fiduciary duties. *Id.* at 240. Specifically, pursuant to long standing case law, where, as here, there has been “fraud in [the] election and approval [of trustee which] relates to qualification and eligibility, and, if discovery thereof is too late for disapproval, it operates to the same end as cause for removal.” *In re Judith Gap Commercial Co.* 1 F.2d 508, 509 (D.Mont.1924)(reversed on other grounds 5 F.2d 307).

As demonstrated hereinabove, Walden has committed fraud upon this Court by falsely asserting in her June 12, 2003 Verified Statement that she had no connection with any of Walker’s creditors or other parties in interest, as this Court found clear and convincing evidence that she had significant and ongoing connections with Shuhi and his various entities. Moreover, Walden

committed numerous acts of fraud upon this Court by consistently lying under oath, and thereby perjuring herself, throughout this Trial by stating she had no business or personal relationship or other connections with Shuhi or any of his various entities. Further, Walden committed fraud upon this Court by creating a cover page to the expert report she prepared for Shuhi's entities in the FCM Civil Case which indicated same was prepared for Bravender in a clear attempt to conceal her relationship with Shuhi and his various entities.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. Linda J. Walden is removed as Chapter 7 Trustee pursuant to 11 U.S.C. §324 for fraud upon this Court;
2. This Court reserves jurisdiction to award fees to Debtor's counsel for the damages caused by Linda J. Walden and her counsel by this action; and
3. This Court's Order Removing Trustee From Chapter 7 Case entered on November 17, 2004 [C.P. 634] is hereby ratified and remains in full force and effect.

**DONE AND ORDERED** in Chambers in the Southern District of Florida this 1<sup>st</sup> day of December, 2004.

PAUL G. HYMAN, JR.  
UNITED STATES BANKRUPTCY JUDGE