

**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
FOR THE FIRST CIRCUIT**

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**BAP NO. NH 05-024**

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**Bankruptcy Case No. 03-10496-JMD  
Adversary No. 03-01348**

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**SCOTT T. FAGNANT,  
Debtor.**

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**SCOTT T. FAGNANT,  
Defendant-Appellant,**

**v.**

**COHEN STEEL SUPPLY, INC.,  
Plaintiff-Appellee.**

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**Appeal from the United States Bankruptcy Court  
for the District of New Hampshire  
(Hon. J. Michael Deasy, U.S. Bankruptcy Judge)**

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**Before  
Hillman, Rosenthal, and Somma,  
United States Bankruptcy Appellate Panel Judges.**

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**Roy W. Tilsley, Esq., on brief for Appellant.**

**Robert M. Koch, Esq., on brief for Appellee.**

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**February 9, 2006**

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**Hillman, U.S. Bankruptcy Appellate Panel Judge.**

This matter is on appeal from the April 14, 2005 judgment and memorandum opinion of the bankruptcy court (the “Judgment”) denying the Debtor’s discharge under 11 U.S.C. § 727(a)(3) for failing to maintain adequate records. Because we conclude that the bankruptcy court’s finding that the Debtor failed to maintain adequate records is not clearly erroneous, we **AFFIRM.**

**JURISDICTION**

A bankruptcy appellate panel may hear appeals from “final judgments, orders and decrees [pursuant to 28 U.S.C. § 158(a)(1)] or with leave of the court, from interlocutory orders and decrees [pursuant to 28 U.S.C. § 158(a)(3)].” Fleet Data Processing Corp. v. Branch (In re Bank of New England Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998). “A decision is final if it ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’” Id. at 646 (citations omitted). An interlocutory order “‘only decides some intervening matter pertaining to the cause, and requires further steps to be taken in order to enable the court to adjudicate the cause on the merits.’” Id. (quoting In re American Colonial Broad. Corp., 758 F.2d 794, 801 (1st Cir. 1985)). A bankruptcy appellate panel is duty-bound to determine its jurisdiction before proceeding to the merits even if not raised by the litigants. See In re George E. Bumpus, Jr. Constr. Co., 226 B.R. 724 (B.A.P. 1st Cir. 1998). A judgment denying a debtor’s discharge is a final order.

**STANDARD OF REVIEW**

The bankruptcy appellate panel reviews the bankruptcy court’s findings of fact for clear error. See TI Fed. Credit Union v. DelBonis, 72 F.3d 921, 928 (1st Cir. 1995); Western Auto

Supply Co. v. Savage Arms, Inc. (In re Savage Indus., Inc.), 43 F.3d 714, 719-20 n.8 (1st Cir. 1994). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Anderson v. Bessemer City, 470 U.S. 564, 573 (1985); Gray v. Travelers Ins. Co. (In re Neponset River Paper Co.), 231 B.R. 829, 830 (B.A.P. 1st Cir. 1999). If the trial court's account of the evidence is plausible in light of the record reviewed in its entirety, a reviewing court may not reverse even if convinced that it would have weighed the evidence differently as a trier of fact. Anderson, 470 U.S. at 574.

### **DISCUSSION**

The bankruptcy court's well conceived opinion found at Cohen Steel Supply, Inc. v. Fagnant (In re Fagnant), 2005 WL 1244866 (Bankr. D.N.H. April 14, 2005), adequately elucidates the facts and conclusions that are controlling on the central issue presented by this appeal; i.e. whether the Debtor failed to maintain adequate records. We therefore adopt that opinion as our own, as no useful purpose would be served by rehearsing those facts and reasoning here.

We have carefully reviewed the record and the parties' briefs, and have duly considered matters raised at oral argument. In the end, we are not left with the firm conviction that the bankruptcy court made a mistake or committed clear error when it found that the Debtor failed to maintain adequate records. Our review shows this finding is plausible in light of the record before us. See Anderson, 470 U.S. at 574; Cabral v. Shamban (In re Cabral), 285 B.R. 563, 571 (B.A.P. 1st Cir. 2002); In re Neponset River Paper Co., 231 B.R. at 830.

## CONCLUSION

Because this appeal presents no substantial question under the clearly erroneous standard of review, we summarily **AFFIRM** the Judgment of the bankruptcy court denying the Debtor's discharge for failing to maintain adequate records.