

# **Bond Case Briefs**

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## **BANKRUPTCY - COLORADO**

### **In re Fassi**

**United States Bankruptcy Court, D. Colorado - May 21, 2013 - Slip Copy - 2013 WL 2190158**

In this bankruptcy action, the bankruptcy court analyzed whether the Stockbroker Exception (Section 109(e) to Chapter 13 eligibility applies to debtors who operated as financial advisors and who were registered as “brokers” through FINRA.

In order to establish that the debtors are not subject to the stockbroker exception to eligibility under Chapter 13, the debtors must show either they do not have “customers,” as defined by § 741(2), or they are not “engaged in the business of effecting transactions in securities.” Here, it was undisputed the debtors were engaged in the business of effecting transactions in securities. Therefore, the issue of whether the debtors are “stockbrokers” turned on whether the debtors could establish by a preponderance of the evidence they did not have customers under § 741(2).

Debtors’ Independent Contractor’s Agreements indicated that the brokerage accounts were managed by the debtors, not deposited or held by the debtors. Client money reached the brokerage for use in actual securities transactions, and the debtors functioned as mere vessels to transport checks from the client’s hands to the brokerage. Clients did not entrust money to the debtors with the expectation the debtors would purchase stock or trade securities. Thus, the court concluded that debtors’ clients were not “customers” under the terms of § 741(2)(B)(ii), and thus, that debtors were not “stockbrokers.”