

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPHINE GIMELSON : CIVIL ACTION
 :
 vs. :
 :
 DAVID J. JUALL, ESQ. : NO. 06-5188

MEMORANDUM

ROBERT F. KELLY, Sr. J.

JANUARY 18, 2007

This is an appeal filed by Josephine Gimelson from an Order of the Bankruptcy Court for the Eastern District of Pennsylvania denying her objection to an unsecured claim in the amount of \$11,000.00 submitted by David J. Juall, Esquire.

For a complete background of the Josephine Gimelson bankruptcy see this Court's Memorandum Opinion of November 23, 2004, In Re: Gimelson 2004 WL 2713059 (EDPA 2004).

Appellee Juall raises the argument that this appeal was not timely filed. The Order of the Bankruptcy Court appealed from, was signed and docketed on September 29, 2006. Gimelson filed her appeal on November 1, 2006 more than 30 days after the entry of the Order appealed from.

Bankruptcy Rule 8002(a) states:

The notice of appeal shall be filed with the clerk of the bankruptcy court within 10 days of the date of the entry of the judgment, order, or decree appealed from.

As the Third Circuit Court of Appeals said in *In re Universal Minerals, Inc.* 755

F.2d 309 3d Cir. 1985

The ten day mandate of Rule 8002(a) has been strictly construed, requiring strict compliance with its terms. *See Matter of McGuire*, 1 B.R. 496, 499 (D.C.W.D.Pa.1979), *312 aff'd, 615 F.2d 1353 (3d Cir. 1980); *see also Matter of Ramsey*, 612 F.2d 1220, 1222, (9th Cir. 1980); *Matter of Butler's Tire & Battery Co., Inc.*, 592 F.2d 1028, 1034 (9th Cir. 1979); *Matter of Best Distribution Co.*, 576 F.2d 1360 (9th Cir. 1978). Nor can it be doubted that the rule is jurisdictional in effect. The Advisory Committee's Note to Rule 8002 expressly states that it is "an adaptation of Rule 4(a) of the Federal Rules of Appellate Procedure." Failure to file a timely notice of appeal thus deprives the district court of jurisdiction to review the bankruptcy court's order or judgment. *See In re LBL Sports Center, Inc.*, 684 F.2d 410, 412 (6th Cir. 1982); *Matter of Robinson* 640 F.2d 737, 738 (5th Cir. 1981); *Matter of Ramsey, supra*, at 1222; *In re H. Daroff & Sons, Inc.*, 403 F.Supp. 243 (E.D.Pa. 1981); *In re W.T. Grant Co.*, 425 F.Supp. 565, 567 (S.D.N.Y. 1976), *aff'd mem. sub nom. Berger v. Rodman*, 559 F.2d 1202 (2d Cir. 1977).

In the present case, the 10 day period for filing the notice of appeal, as required in Rule 8002(a), had clearly expired. The sole provision in the Bankruptcy Rules allowing for an extension of time beyond the 10 day period requires that a motion for extension be filed in the Bankruptcy Court. Rule 8002(c)(2) provides:

A request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect. An extension of time for filing a notice of appeal may not exceed 20 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 10 days from the date of entry of the order granting the motion, whichever is later.

Gimelson neither filed a request for an extension of time within the 10 day period nor made a showing of excusable neglect entitling her to request an extension within the 30 day period following the entry of the Bankruptcy Court's Order. Since no request was made we are

without jurisdiction to pass upon the present appeal.

We therefore enter the following Order.

