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

In re LABRUM & DOAK	:	**CIVIL ACTION**
	:	
	:	
	:	**NO. 99-753**

MEMORANDUM ORDER

This is an appeal by defendant John H. Osorio from the Bankruptcy Court's order entered on December 4, 1998. Presently before the court is the motion of the Official Committee of Unsecured Creditors ("the Committee") to dismiss the appeal to which appellant has filed no response.

On January 6, 1998, an involuntary petition for relief under Chapter 7 of the Bankruptcy Code was filed against debtor Labrum & Doak, a law firm and Pennsylvania general partnership. On January 22, 1998, the Bankruptcy Court granted debtor's motion to convert the case to a Chapter 11 proceeding. On December 2, 1998, the Bankruptcy Court approved the Modified Liquidating Plan of Reorganization pursuant to which the Committee became the plan administrator.

On May 14, 1998, the Committee filed a complaint in the bankruptcy proceeding against several of debtor's former partners, including appellant, for an accounting of post-dissolution income earned from hourly, non-contingent matters.

On November 23, 1998, appellant filed for relief pursuant to Chapter 7 of the Bankruptcy Code in the United States

Bankruptcy Court for the District of New Jersey. A trustee was appointed.

On December 4, 1998, the Bankruptcy Court entered an order in favor of the Committee with regard to the fee dispute declaring that the defendants were liable for "the net profits obtained by them from non-contingency-fee cases and matters initiated during their partnership with the Debtor and personally taken over by them upon the Debtor's dissolution." Appellant filed this appeal from that order on January 6, 1999.

The Committee contends that appellant lacks standing in light of his filing under Chapter 7. Upon commencement of a debtor's filing under Chapter 7, a bankruptcy estate is created. With few exceptions, "all legal or equitable interests of the debtor in property as of the commencement of the case" are vested in the estate. See 11 U.S.C. § 541. Once appointed, the bankruptcy trustee becomes the sole representative of the estate and he alone has the "capacity to sue and be sued" including filing an appeal on behalf of the estate. See 11 U.S.C. § 323; In re New Era, Inc., 135 F.3d 1206, 1209 (7th Cir. 1998) (only trustee had standing to appeal order adverse to debtor); Detrick v. Panalpina, Inc., 108 F.3d 529, (4th Cir. 1997), cert denied, 118 S. Ct. 52 (1997) (trustee alone has standing to prosecute appeals); In re Eisen, 31 F.3d 1447, 1451 n.2 (9th Cir. 1994) (same); Cain v. Hyatt, 101 B.R. 440, 442 (E.D. Pa. 1989) (only

trustee has authority to prosecute or settle causes of action); In re Gulph Woods Corp., 116 B.R. 423, 428 (Bankr. E.D. Pa. 1990) (only trustee and not debtor has capacity to represent estate and to sue and be sued).

Exceptions to this rule have been recognized where the assets of the estate would exceed its liabilities if the appeal is granted or where the order appealed otherwise affects the terms or conditions of the debtor's discharge. See Galan v. First American Bank, 1995 WL, at *1 (E.D. La. Jan. 9, 1995); In re Gulph Woods, 116 B.R. at 428. It is uncontroverted that even were the instant appeal to be granted, the liabilities in appellant's estate would exceed its assets and that this appeal will not affect the terms or conditions of appellant's discharge.

ACCORDINGLY, this day of August, 1999, upon consideration of the Motion of the Official Committee of Unsecured Creditors/Plan Administrator for Dismissal of Appeal (Doc. #3) and in the absence of any response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED,** appellant's appeal is **DENIED** and the above action is **DISMISSED**.

BY THE COURT:

JAY C. WALDMAN, J.