

Bankruptcy Rule 8006 statement of the record and issues on appeal. This new appeal was assigned case number 99-CV-5125 in the district court. On December 16, 1999, I dismissed that appeal for failure to file a timely notice of appeal. Meanwhile, Olick did nothing further in this present action until November 30, 1999.

On November 30, 1999, Olick filed his present motion for enlargement of time nunc pro tunc for the filing of his Rule 8006 statement and for relief from the court's order of September 13, 1999, pursuant to Federal Rule of Civil Procedure 60(b). Appellees Richard W. O'Hay, Chester Sebastianelli, and Margaret Sebastianelli filed a response to Olick's motion on December 6, 1999. On December 20, 1999, a response to Olick's motion was also filed by the "clients of Riley and Fanelli, P.C.," which incorporated the response filed by O'Hay and the Sebastianellis.¹

¹The response filed on December 20, 1999, on behalf of the "clients of Riley and Fanelli, P.C.," was filed specifically on behalf of the following parties: Albert J. Evans, Glenn and Helen Miller, John J. Carroll, Jr., Gene and Susan Hoffman, Mary Jo Sacko, Thomas Bush, Samuel and Ruth Katz, Norman and Cindy Stripe, Jr., Patricia Klassen, Barb Repetz, Allen and Diane Hannan, Ranjett Pawar, Norma Davis, Terry and Gerda Newhard, Jeryl and Jean Moyer, Richard and Jacqueline Selby, Kenneth and Thelma Blast, Marlin Stock, Paul S. and Cynthia Hutira, Barrie Perilla, Donald MacConnell, Helen Ebling, Donald D. and E.M. Thompson, Charles and Isabell Frederici, Joseph and Elizabeth Zaprazny, George and Cleo Smith, Robert and Ann Episcopo, Jeffrey Rostas, Willard and Florence Hering, Roger Walch, Merrill and Donna Kinslow, Stewart Handwerk, Daniel Stevens, Buster and Alice Branham, Alfred and Janet Hauptly, Marie Cirullo, Edwin Leopold, Michael Hudak, Carol Keller, Michael Courtney, Terry and Carol Stehr, Thomas and Gaylen Siro, Joseph and Leslie Schoffstall, Scott and Fiona Jacoby, Alberta Weiser, Leon and Kathy Weaver, Keith and Rosemary Earnst, Dale Wagner, Carl and Mildred Francis, Edward Zamatusky, Joseph and Eleanor Fortiscue, George and Sarah Paybins, David and Elizabeth Evans, Franklin and Martina Schictram, Walter and Ann Vacula, Anthony Borellie, Mary Jane Gallery, Richard and Joanne Lane, George Smith, Michael Seksinsky, Laslo and Joanne Zamolyi, Gwen Miller, George and Bessie Mosellie, John A. Schmidt, Jr., and all other clients of Riley and Fanelli, P.C..

DISCUSSION

Olick, who is proceeding pro se, requests that the court: (1) vacate its order of September 13, 1999, dismissing the appeal, pursuant to Rule 60(b); and (2) enlarge the time nunc pro tunc for the filing of a Rule 8006 of Bankruptcy Procedure statement to include December 1, 1999, pursuant to Rule 9006 of the Federal Rules of Bankruptcy Procedure. Both Rule 60(b)² and Rule 9006³ require the court to analyze whether the movant's failure to do something, in this case to file the Rule 8006 statement, was the result of excusable neglect. See Pioneer Investment Servs.

²Federal Rule of Civil Procedure 60(b) provides in relevant part:

Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On Motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceedings was entered or taken.

Fed. R. Civ. P. 60(b).

³Federal Rule of Bankruptcy Procedure 9006 provides in relevant part:

(b) Enlargement

(1) In General. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P. 9006(b).

Co. v. Brunswick Assocs. Limited Partnership, 507 U.S. 380, 393-94 (discussing the “excusable neglect” standard under various procedural rules including Rule 9006 and Rule 60(b)); In re O’Brien Environmental Energy, Inc., 188 F.3d 116, 126 n.7 (3d Cir. 1999) (noting that the same analysis of excusable neglect applies in the context of a Rule 60(b) motion as in a motion under Rule 9006). As explained below, I find that Olick has not demonstrated excusable neglect, and therefore, I decline to vacate the court’s order of September 13, 1999.

In determining whether Olick’s failure to file his Rule 8006 was the result of excusable neglect, the court is guided by the Supreme Court’s decision in Pioneer. The Court in Pioneer analyzed excusable neglect in the context of Rule 9006. See Pioneer, 507 U.S. at 387-99. The Court held that “the enlargement of prescribed time periods under the ‘excusable neglect’ standard . . . is not limited to situations where the failure to timely file is due to circumstances beyond the control of the filer.” See id. at 391. The Court concluded that the determination of excusable neglect “is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission. These include . . . the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” Id. at 395. Though the Court noted that excusable neglect is a “somewhat ‘elastic concept’”, the Court also made clear that “inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute ‘excusable’ neglect.” Id. at 392.

The issue, therefore, is whether Olick’s failure to file the Rule 8006 was excusable neglect as defined by the Court in Pioneer. Olick provides no excuse for his failure to file the Rule 8006 statement but merely states that he “was not aware that [he] was required to file a B.R.

8006 statement of Record and Issues on Appeal in CA 99-4477.” See Affidavit of Thomas W. Olick in Support of his B.R. 9006 Motion to Enlarge Time to Submit a B.R. 8006 Statement and For Relief from the 9/13/99 Order Pursuant to F.R.C.P. 60(b) (“Olick Affidavit”) at ¶ 4. Olick further states that he did not, in any prior appeal, file a Rule 8006 statement.⁴ See id. at ¶ 5. Thus, Olick’s only excuse for his failure to file the Rule 8006 statement was that he did not know that the Rules of Bankruptcy Procedure required him to do so. The Supreme Court in Pioneer stated expressly that this was not usually adequate to justify a finding of excusable neglect. This is true even though Olick is proceeding pro se. See Briones v. Riviera Hotel & Casino, 116 F.3d 379, 380 (9th Cir. 1997) (per curiam) (observing that as a general rule “pro se litigants are not excused from following court rules”).

Moreover, the other factors identified by the Supreme Court in Pioneer further support the conclusion that there was no excusable neglect in this case. There was a considerable delay before Olick filed this motion for an extension of time to file his Rule 8006 statement. On September 16, 1999, the day that the court dismissed his appeal, Olick knew that he needed to file a Rule 8006 statement. Nonetheless, Olick did not file this motion for an extension of time to file the statement until over two months later. Furthermore, the reason for the delay was within Olick’s reasonable control. These factors, therefore, lend further support to the

⁴Although the court does not question the validity of the statement made by Olick that he has never before filed a Rule 8006 statement in a bankruptcy appeal, the court does note that a prior appeal brought by Olick was dismissed by this court for that very reason. On July 15, 1998, the court dismissed an appeal by Olick, which was assigned case number 98-CV-3548, for failure to comply with Rule 8006 of the Federal Rules of Bankruptcy Procedure. See Olick v. National Penn Bank, 98-3548, Order of July 15, 1998. Thus, although it may be true that Olick had never filed a Rule 8006 statement in a prior appeal, he nonetheless should have been aware of the requirement to do so.

conclusion that Olick's neglect was not excusable.⁵

Therefore, because Olick proffers no excuse except ignorance of the bankruptcy rules, and because there was a considerable delay and the failure to file was within the reasonable control of Olick himself, I conclude that Olick has not demonstrated excusable neglect.

Accordingly, I will deny his motion to vacate the court's order of September 13, 1999, and will also deny his request to permit an untimely filing of his Rule 8006 statement.

CONCLUSION

Because Olick has not demonstrated excusable neglect, the court will deny his motion to vacate the court's order of September 13, 1999. Moreover, for the same reason, the court will not permit Olick an enlargement of time nunc pro tunc to file his Rule 8006 statement.

Accordingly, this case will remain closed. An appropriate order follows.

⁵The court recognizes that no prejudice to any other party has been shown in this case, nor has it been demonstrated that Olick acted in bad faith in failing to file his Rule 8006 statement.

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

IN THE MATTER OF:	:	
THOMAS W. OLICK, et al.	:	99-CV-4477
	:	Adversary No. 96-2349
	:	Bankruptcy No. 96-22123

ORDER

AND NOW, this day of January, 2000, upon consideration of Thomas W. Olick's B.R. 9006(b)(1) Motion for Enlargement of Time Nunc Pro Tunc for the Filing of a B.R. 8006 Statement and for Relief from the 9/13/99 Order Pursuant to F.R.C.P. 60(b) (Doc. No. 5), the Answer of Defendants Richard W. O'Hay and Chester and Margaret Sebastianelli to Olick's Motion (Doc. No. 6), as well as the answer to the Olick's Motion filed by the clients of Riley and Fanelli, P.C. (Doc. No. 8), IT IS HEREBY ORDERED that the motion is DENIED and the above-captioned motion is DISMISSED WITH PREJUDICE.

William H. Yohn, Jr., J.