

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

FAYE R. COHEN, and	:	CIVIL ACTION
SANFORD H. COHEN,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
FEDERAL DEPOSIT INSURANCE	:	
CORPORATION, et al.	:	
Defendants.	:	No. 91-CV-3944

MEMORANDUM AND ORDER

SCHILLER, J.

June 19, 2003

Following a bench trial in this matter, I issued findings of fact and conclusions of law and entered judgment in favor of Defendant Federal Deposit Insurance Corporation (“FDIC”) and against Plaintiffs Faye R. Cohen and Sanford H. Cohen (“Cohens”). *See* Memorandum and Order dated May 14, 2003. Presently before the Court is Plaintiffs’ Motion to Amend Judgment.

Under Federal Rule of Civil Procedure 59(e), a party may move the court to alter or amend its judgment. *See* FED. R. CIV. P. 59(e). The purpose of a motion to alter or amend the judgment is to correct manifest errors of law or fact or to present newly discovered evidence. *See Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985).¹ Rule 59(e) is intended to afford relief only in extraordinary circumstances, and not to routinely give litigants a “second bite at the proverbial apple.” *Bachir v. Transoceanic Cable Ship Co.*, Civ. A. No. 98-4625, 2002 U.S. Dist. LEXIS 19840,

¹ Plaintiffs’ motion would have been more appropriately filed under Local Rule of Civil Procedure 7.1(g) or Federal Rule of Civil Procedure 52(b). *See* LOCAL R. CIV. P. 7.1(g) (providing for motions for reconsideration); FED. R. CIV. P. 52(b) (permitting parties to move for amendment of findings of fact in non-jury trials). With the exception of the contentions related to Plaintiffs’ tax returns, Plaintiffs’ motion is without merit when analyzed under either of these rules.

at * 5, 2002 WL 31357699, at *2 (S.D.N.Y. Oct. 17, 2002).²

The Cohens' first argument is that footnote 3 of the Court's Memorandum and Order dated May 14, 2003 is erroneous. In this regard, the Cohens contend that my indication that there were "certain irregularities in the Cohens' income tax returns . . . of concern to the Court" was inaccurate because no evidence was presented at trial suggesting that there were any irregularities in the Cohens' professionally-prepared tax returns. Having considered the Cohens' arguments, I agree that the footnote cannot stand as stated. Nonetheless, the Court's concern remains. Specifically, testimony and representations made at trial appear to be inconsistent with the amount of income reflected on the tax returns. *See* 2/21/03 Tr. at 50-51. I will amend footnote three accordingly.

The Cohens' remaining contentions rehash arguments previously made at trial. Because a Rule 59(e) motion should not be used as "means to reargue matters already argued and disposed of," *Waye v. First Citizen's Nat'l Bank*, 846 F. Supp. 310, 314 (MD. Pa.), *aff'd*, 31 F.3d 1175 (3d Cir. 1994), and because their contentions were addressed in the Court's Memorandum and Order of May 14, 2003, these arguments are without merit and will not be addressed herein.

An appropriate Order follows.

² Plaintiffs filed the instant motion on May 27, 2003. On June 12, 2003, Plaintiff's filed a notice of appeal in this action. If a party has timely filed a Rule 59 motion and the motion has not been ruled on, the case lacks finality and the notice of appeal does not deprive the district court of jurisdiction to rule on the motion. *See* FED. R. APP. P. 4(a)(4)(A); *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174 (1989); *Healy v. Pa. R. Co*, 181 F.3d 934, 935-37 (3d Cir. 1950); 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2821 (2d ed. 1995).

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CORPORATION, et al.	:	
Defendants.	:	No. 91-CV-3944

ORDER

AND NOW, this 19th day of **June, 2003**, upon consideration of Plaintiffs Faye R. Cohen’s and Sanford H. Cohen’s Motion to Amend Judgment, it is hereby **ORDERED** that:

1. Plaintiffs’ Motion to Amend Judgment (Document No. 59) is **GRANTED IN PART AND DENIED IN PART**.
2. Plaintiffs’ Motion is **GRANTED** to the extent it seeks amendment of footnote three of the Court’s Memorandum and Order of May 14, 2003. Footnote three of the Court’s Memorandum and Order of May 14, 2003 is amended to state the following:
“It should also be noted that testimony and representations made at trial appear to be inconsistent with the amount of income reflected on the tax returns. These inconsistencies are of concern to the Court.”
3. Plaintiffs’ Motion is **DENIED** in all other respects.

BY THE COURT:

Berle M. Schiller, J.