

Consequently, on September 13, 1999, I dismissed the appeal in 99-CV-4477, and remanded the matter to the Clerk of the United States Bankruptcy Court for the Eastern District of Pennsylvania.

According to Olick, he received a copy of the court's order on September 16, 1999. On that same day, Olick mailed to the court a new notice of appeal of the order of July 28, 1999, as well as a new filing fee and a Rule 8006 statement of the record and issues on appeal. Olick contends that he subsequently learned that it was also necessary to file a motion for enlargement of time. Accordingly, Olick prepared the motion at issue here and filed it, along with an affidavit in support thereof, on November 19, 1999.

Appellees Richard W. O'Hay, Chester Sebastianelli, and Margaret Sebastianelli filed a response to Olick's motion on November 24, 1999. On December 6, 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.²

²The response filed on December 6, 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

DISCUSSION

Olick, who is proceeding pro se, requests that the court: (1) enlarge the time nunc pro tunc for the submission of a notice of appeal; and (2) enlarge the time nunc pro tunc for the filing of a Rule 8006 of Bankruptcy Procedure statement and vacate the September 13, 1999, order of this court in 99-4477, which dismissed that appeal for failure to file a Rule 8006 statement in a timely fashion. For the following reasons, the court will deny both of Olick's requests.

First, Olick asks the court to enlarge the time within which he had to file his notice of appeal to include September 17, 1999. Olick argues that Rule 9006(b) of Federal Bankruptcy Procedure permits this result because it allows the court to enlarge a time period within which an act is required to be done when the failure to act was the result of "excusable neglect." See Brief in Support of Appellant's Motion for Enlargement of Time Nunc Pro Tunc and to Vacate the 9/13/99 Order in CA 99-4477 ("Olick's Brief") at 2. Olick's conclusion, however, is incorrect because he has failed to examine Rule 9006 as a whole.

Subsection (b) of Rule 9006 provides that:

(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.

. . . .

(3) Enlargement limited

other clients of Riley and Fanelli, P.C. (Document No. 9; refiled as Document No. 10).

The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.

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

Federal Rule of Bankruptcy Procedure 8002 governs the time for filing a notice of appeal of a judgment, order or decree issued by a bankruptcy court. See Fed. R. Bankr. P. 8002. Thus, contrary to Olick's contention, subsection one of Rule 9006 does not apply to enlargements of time to file a notice of appeal because subsection three of Rule 9006 provides that a court may enlarge the time for taking action under Rule 8002 only to the extent and under the conditions stated in that rule. See Fed. R. Bankr. P. 9006(b)(3).

To determine whether the court may grant Olick an enlargement of time to file his notice of appeal, therefore, it is necessary to examine the requirements and limitations of Rule 8002. Rule 8002 provides that: "The notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from." Fed. R. Bankr. P. 8002(a). Subsection (c) of Rule 8002, however, does permit a party to request an extension of time to file a notice of appeal under certain circumstances.³ Specifically, Rule 8002(c)(2) requires that:

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

³In their answer, defendants Richard W. O'Hay and Chester and Margaret Sebastinelli argue that the plain language of Rule 8002 permits only the bankruptcy court, and not this court, to extend the time for filing a notice of appeal of a bankruptcy court order. See Memo. of Law of Defendants Richard W. O'Hay and Chester and Margaret Sebastinelli in Opposition to Appellant Olick's Motion for Enlargement of Time Nunc Pro Tunc for Submission of Notice of Appeal and to Vacate the Order of September 13, 1999 ("Opp. Memo.") at 1-2. The court need not decide this issue, however, because the motion for enlargement of time is untimely and thus, the court will deny it for this separate reason.

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.

Fed. R. Bankr. P. 8002(c)(2). According to this rule, therefore, a party may request an extension of time to file a notice of appeal either before the time for filing has ended, or within twenty days after the expiration of the time for filing. See id. If the party files the motion within twenty days of the expiration of the time period, the extension will be granted only if the party can demonstrate a showing of “excusable neglect.” See id. The court may not grant an extension to file a notice of appeal even upon a showing of excusable neglect, however, if the motion for such an extension is not filed within this twenty day period. See id.; see also Shareholders v. Sound Radio, Inc., 109 F.3d 873, 879 (3d Cir. 1997) (explaining that “even in cases of excusable neglect, the issue must be raised and the appeal filed within the 30-day window of Rule 8002 (Rule 8002(a)’s 10 days for the appeal + 8002(c)’s 20 days for the extension)”).

Examining the facts of this case in light of the applicable bankruptcy rules, I conclude that Olick’s motion was untimely filed and therefore, must be denied. The bankruptcy court order that Olick seeks to appeal was entered on July 28, 1999. Pursuant to Rule 8002(a), Olick had until August 11, 1999, to file his notice of appeal in a timely fashion. See Fed. R. Bankr. P. 8002(a). Olick did not file his appeal within that time frame.⁴ Thereafter, if Olick wished to file a notice of appeal, he also needed to file a motion for an enlargement of time to file a notice of

⁴As explained above, Olick did file a notice of appeal of the bankruptcy court’s July 28, 1999, order. This appeal, however, which was captioned 99-CV-4477, was dismissed for failure to follow other bankruptcy rules. Olick did not appeal the dismissal of 99-CV-4477 to the Third Circuit. Instead, Olick filed this separate appeal, captioned 99-CV-5125, which was filed outside the time limit for bringing an appeal.

appeal pursuant to Rule 8002(c). Although Olick filed his notice of appeal on September 17, 1999, he did not file his motion for an enlargement of time to file the notice of appeal until November 19, 1999.⁵ This motion for an enlargement of time, therefore, was filed over two months after the permissible date for filing such a motion under the applicable rules of bankruptcy procedure. Therefore, both the notice of appeal and the motion to extend the time limit for filing a notice of appeal were untimely.

The court is constrained by the Federal Rules of Bankruptcy Procedure, which provide specific rules for the time during which a party may request an extension of time to file a notice of appeal. The United States Court of Appeals for the Third Circuit has clearly pronounced that the time limits of Rule 8002 are to be “strictly construed” and are jurisdictional in effect. See Whitmere Dev. Corp. v. Township of Cherry Hill, 786 F.2d 185, 187 (3d Cir. 1986); Shareholders, 109 F.3d at 879 (“The failure to file a timely notice of appeal [from the bankruptcy court] creates a jurisdictional defect barring appellate review.”); In re Colon, 941 F.2d 242, 245 (3d Cir.1991) (observing that “a late filing is insufficient to vest the district court with jurisdiction of the appeal”). The court may not permit Olick to circumvent the unambiguous rules of bankruptcy procedure. This is true even though Olick is proceeding pro se. See Reidel

⁵Hypothetically speaking, if Olick had filed a motion to enlarge the time in which to file his notice of appeal before August 11, 1999, the court could have granted the extension without even inquiring into whether the failure to file by the deadline was the result of excusable neglect. See Fed. R. Bankr. P. 8002(c)(2). Furthermore, if Olick had filed his motion for an extension by August 31, 1999, (which was twenty days following the close of time to file the notice of appeal), the court could have granted his motion upon a finding that the failure to file was the result of excusable neglect. See id. Olick did not file his motion to enlarge the time limit, however, within either of these time limits. Thus, despite Olick’s contention to the contrary, the court may not grant his motion to enlarge the time limit for filing the notice of appeal even if the court were to conclude that Olick’s failure to file the motion was the result of excusable neglect.

v. Marine Midland Bank, No. 96-1082, 1997 WL 176306, at *2 (N.D.N.Y. April 10, 1997)

(holding that a pro se litigant still is required to abide by bankruptcy court rules).

Because the court will deny Olick's motion to enlarge the time for filing his notice of appeal, no notice of appeal was timely filed in this case. Thus, because the notice of appeal was untimely, the court does not have jurisdiction to hear the appeal and must dismiss the appeal.

See Shareholders, 109 F.3d at 879 (explaining that the failure to file a timely notice of appeal is a jurisdictional bar to appellate review in the district court).

CONCLUSION

Because Olick's motion for enlargement of time to file a notice of appeal of the bankruptcy court's final order was untimely, and because Olick may not move in this case to vacate an order in another case, the motion will be denied. In addition, because Olick's notice of appeal was not timely filed, the court will dismiss with prejudice the appeal in the present action for lack of appellate jurisdiction. An appropriate order follows.

