

J. BARDON GROSHON
BY:
Deputy Clerk

JUDGEMENT ENTERED ON SEP 1 1994

Appellants justify their untimeliness under the theory of "excusable neglect." Paragraph 4 of appellants' Motion for Enlargement of Time alleges that the Affiliated Creditors mailed their Notice of Appeal to the Clerk of Bankruptcy Court, but inadvertently failed to include the required filing fees. Due to the absence of any filing fees, the Notice of Appeal was alleged-

ly returned to the appellants, who further allege that they mistakenly did not realize the need to refile their Notice of Appeal until now. The appellants supply no date as to when their alleged mailing to the Bankruptcy Clerk occurred, nor do they provide any evidence of the returned envelop containing their attempted filing. Furthermore, the court record is devoid of any record of receipt of any Notice of Appeal prior to August 15, 1994; and there is no indication that a prior Notice of Appeal was ever received and "returned."

Nonetheless, even if the court were to accept the appellants' recital of events, the court cannot utilize the concept of "excusable neglect" to grant the requested Enlargement of Time for the filing of their Notice of Appeal. Bankruptcy Rule 8002(c), entitled Extension of Time for Appeal, controls this motion. It provides that a bankruptcy judge's discretion to expand the filing period is constrained by the requirement that the request must be made during the 20 day period following the expiration of the original 10 day period. Rule 8002(c) does not grant judicial discretion to enlarge time where the request is made outside the 20 day period following the expiration of the initial 10 day period.

Here, the Notice of Appeal of the June 23, 1994 Order was not filed until August 15, 1994. The "excusable neglect" exception does not apply to the appellants' request as it occurred outside the 20 day period following the expiration of the original 10 day period. The Notes and Comments to Rule 8002 explain

that the time frame for filing the Notice of Appeal is to be strictly construed. The plain language of the Rule does not allow the court to grant the requested extension of time.

The court therefore finds that the appellants have not filed a timely Notice of Appeal and that the request for an extension of time for filing must be denied.

It is hereby:

1. ORDERED that the appellants' Motion for Enlargement of Time in which to file their Notice of Appeal is DENIED as untimely under Bankruptcy Rule 8002; and

2. ORDERED that the Bankruptcy Clerk send this file to the Clerk, United States District Court for the Western District of North Carolina, for whatever disposition the District Court deems appropriate.

This the 31st day of August, 1994.



George R. Hodges
United States Bankruptcy Judge