

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

In re:
 GREATER HARTFORD ARCHITECTURE
 CONSERVANCY, INC.
 Debtor

 MARC J. GLASS
 Appellant
 v.
 GREATER HARTFORD ARCHITECTURE
 CONSERVANCY, INC., *et al.*
 Appellees

[Bankruptcy File No. 00-21425]

CIVIL ACTION NO.
3:04cv97(GLG)

APRIL 27, 2004

FILED
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 U.S. DISTRICT COURT
 DISTRICT OF CONNECTICUT

**MEMORANDUM OF LAW IN SUPPORT OF APPELLEES' MOTION TO DISMISS
BANKRUPTCY APPEAL FOR LACK OF JURISDICTION**

Nevets, Inc. and Steven C. Brigham ("Appellees") hereby submit this memorandum of law in support of their motion to dismiss this case.

Preliminary Statement

In this case, Marc J. Glass ("Appellant") seeks to invoke the power of a United States District Court to review final orders of a Bankruptcy Court pursuant to 28 U.S.C. § 158(a)(1). It is well-settled, however, that absent timely filing of a notice of appeal, a District Court lacks jurisdiction over the subject matter of a bankruptcy appeal. Because Appellant failed to file a timely notice of appeal, this case must be dismissed.

Relevant Facts

Greater Hartford Architecture Conservancy, Inc. ("GHAC") is the debtor in a Chapter 7 bankruptcy case proceeding before the U.S. Bankruptcy Court for the District of Connecticut. During the course of GHAC's bankruptcy case, GHAC's trustee conducted an auction sale of certain of GHAC's property located in Hartford, Connecticut. Marc Glass objected to that sale. By order entered on May 1, 2003, the Bankruptcy Court overruled Glass' objections and approved the sale. See, *e.g.*, Exhibit A (Bankruptcy Court Docket, 4/4/03-4/26/04, with pertinent entries highlighted), at p. 3. On May 6, 2003, Glass timely moved to reconsider. Exhibit A, at p. 3.

The Bankruptcy Court then conducted a series of evidentiary hearings, and gave the parties the opportunity to submit briefs on a mutually agreed schedule. Exhibit A, pp. 6-8. On December 18, 2003, the Bankruptcy Court entered an order denying the motion for reconsideration. Exhibit A, p. 9. Pursuant to the applicable rules, the last date upon which Glass could timely file his notice of appeal was Monday, December 29, 2003.

On January 8, 2004, fully twenty-one (21) days after entry of the Bankruptcy Court's order denying the motion for reconsideration, Glass filed a notice of appeal. Exhibit A, p. 9. At no time did Glass seek enlargement of the time to file his notice of appeal, or otherwise seek leave to file an untimely appeal. See Exhibit A, *passim*. Appellees now move to dismiss this case because, in the absence of a timely notice of appeal, this Court simply has no jurisdiction to entertain the appeal.

Legal Argument

I. This Bankruptcy Appeal was Untimely Noticed, and must therefore be Dismissed for Lack of Jurisdiction

The timeliness of a notice of appeal from a bankruptcy court order is governed by Section 8002 of the Federal Rules of Bankruptcy Procedure. Rule 8002(a) provides, in relevant part:

(a) Ten-day Period. 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. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires. A notice of appeal filed after the announcement of a decision or order but before entry of the judgment, order, or decree shall be treated as filed after such entry and on the day thereof. If a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, the clerk of the district court or the clerk of the bankruptcy appellate panel shall note thereon the date on which it was received and transmit it to the clerk and it shall be deemed filed with the clerk on the date so noted.

Rule 8002(a), Fed. R. Bankr. P.

The manner in which time is computed is governed by Bankruptcy Rule 9006, which reads, in relevant part:

(a) Computation. In computing any period of time prescribed or allowed by these rules or by the Federal Rules of Civil Procedure made applicable by these rules, by the local rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the clerk's office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 8 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 5001(c), "Legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day,

Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the court is held.

Rule 9006(a), Fed. R. Bankr. P.

In this case, the Bankruptcy Court order denying Appellant's motion for reconsideration was entered on December 18, 2003. Accordingly, applying Bankruptcy Rules 8002 and 9006, a notice of appeal would have been timely up to and including Monday, December 29, 2003. However, the notice of appeal was not filed until January 8, 2004.

The consequences of filing an untimely notice of appeal are significant in the bankruptcy context. It is literally hornbook law that:

Unless an appeal is timely taken, the reviewing court lacks jurisdiction to hear it. The necessity for providing a precisely ascertainable point at which litigation comes to an end strongly militates against an expansive reading of Rule 8002(a); the courts have been loathe to read it in any fashion other than strictly. Cases interpreting Rule 8002 and its predecessor, Bankruptcy Rule 802, have uniformly held that the sine qua non of a bankruptcy appeal is a timely filed notice.

10 *Collier on Bankruptcy*, ¶ 8002.03 (15th ed. rev'd, Matthew Bender).

Thus, in *In re White*, 183 B.R. 356, 358-359 (D. Conn. 1995) (Nevas, J.), a case strikingly similar to this case, the District Court dismissed for lack of jurisdiction a debtor's challenge to Bankruptcy Court orders (i) overruling the debtor's objection to a proof of claim filed by the Internal Revenue Service, and (ii) denying the debtor's motion for reconsideration. The order denying reconsideration was entered on the Bankruptcy Court docket on October 21, 1994, in the debtor's notice of appeal was not filed until November 23, 1994. The Court observed that the notice of appeal was filed "... beyond the 10 day period prescribed in Rule 8002" and concluded that "...[c]onsequently, this court lacks jurisdiction to hear [debtor's]

appeal from the Bankruptcy Court's ruling denying his objection to the IRS's proof of claim. Accordingly, [debtor's] appeal of the bankruptcy court's ruling on the IRS's proof of claim is dismissed." 183 B.R. at 359.¹

In re White merely reflects the very well-settled rule that timely filing of a notice of appeal is a jurisdictional prerequisite to review of a bankruptcy court order under 28 U.S.C. § 158 (a) (1). See, e.g., *In re Hirwit*, 970 F.2d 709, 710 (10th Cir. 1994) (appellate jurisdiction over challenge to bankruptcy ruling lacking where notice filed one day late); *Matter of Topco, Inc.*, 894 F.2d 727 (5th Cir. 1990) (ten day rule jurisdictional); *In re Delta Engineering Intern. Inc.*, 270 F.3d 584 (8th Cir. 2001) (ten day rule jurisdictional, even in face of due process challenge); *In re Universal Minerals, Inc.*, 755 F.2d 309, 311-312 (3rd Cir. 1985)(10 day rule jurisdictional; relied on in *In re White*); *In re C.R. Davidson Co., Inc.*, 232 B.R. 549, 551 (2d Cir. B.A.P. 1999) (confirming, in dicta, that untimely appeal fails to confer appellate jurisdiction); *In re Wechsler*, 246 B.R. 490, 492 (S.D.N.Y. 2000) (holding that district courts have no jurisdiction to review order of bankruptcy court if notice of appeal not timely filed). Where, as here, the notice of appeal was untimely filed, this court cannot assert appellate jurisdiction. The case must be dismissed.

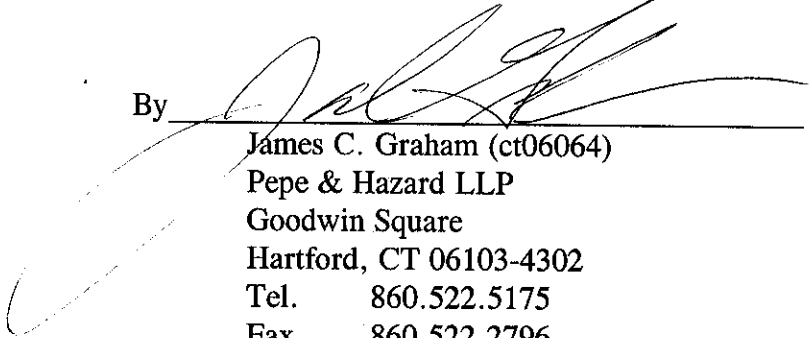
¹ Judge Nevas also observed that, as here, the putative appellant had failed to seek enlargement of the time to file his appeal or otherwise make a showing entitling him to more time to file the appeal. 183 B.R. at 359, fn.4.

Conclusion

For all the foregoing reasons, Appellees' Motion to Dismiss for Lack of Jurisdiction must be granted.

NEVETS, INC. and
STEVEN C. BRIGHAM

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