

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: ) In Proceedings  
) Under Chapter 7  
KENNETH J. NALDER, )  
) No. BK 89-40025  
Debtor(s), )

ORDER

This matter is before the Court on the debtor's motion to extend the time for filing a notice of appeal pursuant to Bankruptcy Rule 8002(c). F. Bankr. R. 8002(c). The 10-day period for filing a notice of appeal under Rule 8002(a) expired on September 8, 1990. Generally, a request to extend the time for filing a notice of appeal must be made before the time for filing a notice of appeal has expired. Rule 8002(c) provides an exception to the 10-day filing requirement and allows an additional 20 days in which to file a request for extension of time (except in certain types of cases not applicable here) if the debtor makes a showing of "excusable neglect."

The determination of whether neglect is "excusable" is a matter of sound judicial discretion. Manhattan-Ward, Inc. v. Grinnell Corp., 490 F.2d 1183 (2d Cir. 1974). Excusable neglect may exist because of a variety of grounds or circumstances, including the death or disability of a party or attorney or failure of the mails. In re Soter, 31 B.R. 986 (Bankr. D.Vt. 1983). However, not understanding the Bankruptcy Rules, heavy workload of counsel, and change of counsel in the law firm representing the appellant, have been found not to constitute excusable neglect. See 9 Collier on Bankruptcy, ¶8002.07, at 8002-24 (15th ed. 1990). In making a determination of excusable neglect, a court may

consider 1) whether the asserted inadvertence reflects an easily manufactured excuse incapable of verification by the court, 2) whether the tardiness results from counsels failure to provide for a readily foreseeable consequence, and 3) whether the court is satisfied that the inadvertence resulted despite good faith efforts toward compliance. See id., at 8002-23, n. 11.

In the present case, the reason given for the debtor's failure to file a notice of appeal or request for extension of time within the 10-day period of Rule 8002 was the inability of the debtor and his counsel to meet to discuss the option of an appeal due to their conflicting schedules. The Court is not satisfied that the parties' difficulty in finding a mutually satisfactory meeting time is the sort of unique circumstance or insurmountable obstacle that would compel a finding of "excusable neglect." The Court finds that the debtor has failed to make a showing sufficient to come within the exception of Rule 8002(c) and, accordingly, denies his motion for extension of time to file an appeal.

IT IS ORDERED that the debtor's motion for extension of time to file an appeal is DENIED.

/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: September 27, 1990