

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE MARIA ELENA CARRILLO,
Debtor.

BAP No. CO-13-014

MARIA ELENA CARRILLO,
Appellant,

Bankr. No. 12-33389
Chapter 13

v.

DISMISSAL ORDER

March 20, 2013

SALLY J. ZEMAN, Chapter 13
Trustee, UNITED STATES TRUSTEE,
CITIBANK, N.A., as Trustee for the
Certificateholders of the MLMI Trust,
Mortgage Loan Asset-Backed
Certificates, Series 2006-HE5, its
predecessors, successors, and assigns,
and PREMIER MEMBERS FEDERAL
CREDIT UNION,

Appellee.

Before CORNISH, NUGENT, and KARLIN, Bankruptcy Judges.

On February 22, 2013, this Court issued its Order to Show Cause Why Appeal Should Not Be Considered for Dismissal as Untimely (“OSC”). On March 8, 2013, the pro se Appellant Maria Elena Carrillo filed her Response (“Response”) to the OSC. On March 15, 2013, the Appellees Sally J. Zeman, Chapter 13 Trustee, and Citibank N.A., as Trustee for the Certificateholders of the MLMI Trust, Mortgage Loan Asset-Backed Certificates, Series 2006-HE5 (“Citibank”) filed replies in opposition to Appellant’s Response.

Previously, on February 21, 2013, Appellant filed an Opposed Motion for Stay Pending Appeal Pursuant F.R.C.P. Rule 62 and Fed. Bankr. P. 9024 (the “Stay Motion”). On March 1, 2013, Citibank filed its Response to the Stay

Motion.

Federal Rule of Bankruptcy Procedure 8002(a) mandates that a notice of appeal be filed within 14 days of the entry of the order appealed. In this case, the order appealed was entered on February 6, 2013, but the Appellant's Notice of Appeal was not filed until February 21, 2013. Thus, the Appellant's Notice of Appeal is not timely, and, absent an extension of the 14-day period by the bankruptcy court pursuant to Federal Rule of Bankruptcy Procedure 8002(c), this Court lacks jurisdiction over the appeal. *Deyhiny v. Rupp (In re Herwit)*, 970 F.2d 709, 710 (10th Cir. 1992); *Furst v. Furst (In re Furst)*, 206 B.R. 979, 980 (10th Cir. BAP 1997).

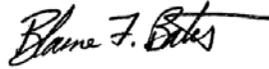
This Rule is not discretionary and it is well-settled that "an appellant's pro se status does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules of [Bankruptcy] and Appellate Procedure." *Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994). Accordingly, we cannot extend the filing deadlines to file a notice of appeal to create jurisdiction for *pro se* litigants. The Appellant states she received incorrect advice from both the bankruptcy court clerks and the court of appeals clerk and relied on the appeal timing provisions found in the Federal Rules of Appellate Procedure. However, these rules plainly state that they apply to appeals from the district court to the court of appeals. *See* Fed. R. App. P. 3 and 4. It is undisputed that Appellant seeks to appeal an order from the bankruptcy court. Such appeals, as stated above, are not governed by these provisions of the Appellate Rules, but by the Bankruptcy Rules.¹

Accordingly, it is HEREBY ORDERED that:

¹ *See Furst*, 206 B.R. at 981 (quoting *United States v. Heller*, 957 F.2d 26, 32 (1st Cir. 1992) ("Self-represented parties must be aware from the outset that advice from [the clerk's office] is merely advice and cannot excuse a failure to meet fundamental jurisdictional requirements. They must be aware, too, that this is a risk they assume when they opt to proceed pro se.")).

- (1) This appeal is DISMISSED.
- (2) The Stay Motion is DENIED AS MOOT.
- (3) All pending deadlines are VACATED.²

For the Panel:



Blaine F. Bates
Clerk of Court

² Appellant also has not paid the filing and appellate fees for this appeal, or responded to our February 22, 2013, Notice of Deficiency and Order to Show Cause that required the filing of status reports regarding her fee waiver application that she filed with the bankruptcy court. As such, this appeal may be dismissed on this ground as well.