

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

IN RE LEONID SHIFRIN, also known
as Leo Shifrin, formerly doing business
as MPLS, formerly doing business as
Shifrin Inc.,

Debtor.

LEONID SHIFRIN,

Appellant,

v.

HARVEY SENDER, Chapter 7 Trustee,
CF IL, LLC, through its servicer
AMRESCO Commercial Finance, LLC,
Glasgow Inc., doing business as
Colonial Financial, Inc.

Appellee.

BAP No. CO-13-074

Bankr. No. 12-22722
Chapter 7

DISMISSAL ORDER

November 18, 2013

Before CORNISH, KARLIN, and JACOBVITZ, Bankruptcy Judges.

On October 10, 2013, this Court issued its Order to Show Cause Why Appeal Should Not Be Considered for Dismissal as Untimely (“OSC”). On October 22, 2013, the pro se Appellant Leonid Shifrin filed a Response to the OSC. On October 28, 2013, the Appellee Harvey Sender, Chapter 7 Trustee (“Trustee”), filed a Response Memorandum to the OSC and Appendix in Support. On November 6, 2013, Appellant filed a reply to the Trustee’s response.¹

¹ Also on November 6, 2013, Appellant filed a Motion to Hold Sale of Exempt Business Tools and Homestead Until Appeals are Decided (the “Stay Motion”), which seeks to stay an unspecified sale pending appeal. The Stay Motion was filed by Appellant in this appeal as well as in his other appeals presently pending before the Court, CO-13-073, -075, and -076. The Trustee filed

(continued...)

This appeal is from the bankruptcy court's September 13th, 2013, Order (docket entry 123) that in the main denied Appellant's renewed motion for a continuance to obtain counsel (the "Appealed Order").² Appellant's Notice of Appeal states in part that it is from the "Debtors Motion for Continuance to find Council (sic)."³

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 Appealed Order was entered on September 13, 2013, but the Appellant's Notice of Appeal was not filed until October 8, 2013 – twenty-five (25) days after the date of entry of the Appealed Order. Thus, absent an extension of the 14-day period by the bankruptcy court pursuant to Federal Rule of Bankruptcy Procedure 8002(c), the Appellant's Notice of Appeal is not timely, and this Court lacks jurisdiction over the appeal. *Deyhimy 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).

Appellant has not cited any court order or other authority extending the time for filing. Instead, he claims he was never mailed a copy of the Appealed Order and did not receive notice of it until October 1, 2013. Even if true, this was through no one's fault but Appellant himself, as he failed to notify the

¹ (...continued)
a response to the Stay Motion on November 13, 2013. Because we dismiss the instant appeal today as untimely, the Stay Motion is denied herein as moot.

² After the Appealed Order had been entered, Appellant filed a reply in further support of his motion for continuance. On October 2, 2013 (docket entry 136), the bankruptcy court entered an Order that summarily denied the requests in that reply as moot based on the fact that the Appealed Order had already denied Appellant's motion for a continuance.

³ Because the Notice of Appeal sought to appeal multiple orders, it was construed as four separate appeals pursuant to 10th Circuit BAP Local Rule 8001-1. Each appeal has now been assigned its own appellate case number. See Order Construing Notice of Appeal as Four Notices of Appeal [], entered by this Court on October 10, 2013, in BAP Appeal No. CO-13-073.

bankruptcy court of his change in address, as required by Federal Rule of Bankruptcy Procedure 4002(a)(5).

The bankruptcy court docket reflects that when Appellant filed his Chapter 7 petition in June 2012, he provided the court his home address. On February 19, 2013 (docket entry 48), however, his counsel filed a Notice of Change of Address/Entry of Appearance for Appellant, listing Appellant's address as FCI Florence, P.O. Box 6000, Florence, CO 81226 (the "Florence Address").

The Trustee advises that the incarcerated Appellant was transferred at some point from the Florence Address to a correctional institution in Englewood, Colorado (the "Englewood Address"), but Appellant then never filed a statement of address change with the bankruptcy court advising of his transfer. It is for that reason that the bankruptcy court properly mailed the Appealed Order to the address of record –the Florence Address.

To the extent Appellant argues that by filing two pleadings listing the Englewood address under his signature block, *see* Docket Entries 86, 90, the Bankruptcy court was somehow required to mail the Appealed Order to that address, we disagree. First, these two inconspicuous references do not constitute the statement of change of address required by Rule 4002(a)(5) that would result in the requisite amendment of the records of the bankruptcy court. Second, our independent review of the bankruptcy court docket reflects that in seven subsequent filings, Appellant listed no address for himself at all. *See* Docket Entries 97, 100, 101, 102, 108, 125, 132.⁴ And the fact that the Trustee referred to Appellant's presence at the Englewood Address, and in fact served papers upon

⁴ Appellant did list the Englewood Address on his October 8, 2013, Notice of Appeal (docket entry 144), and on October 9, 2013, this Court accordingly docketed this appeal utilizing the Englewood Address as well as the addresses for all other parties specified by Appellant. *See* Fed. R. Bankr. P. 8001(a). Subsequently, on October 10, 2013, the bankruptcy court modified docket entry 144 to reflect Appellant's updated Englewood Address.

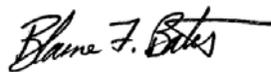
him there (Appendix at 83, 284, 290) also does not help Appellant, as it is the debtor's duty to advise the court where he resides. *In re Davis*, 275 B.R. 864 (8th Cir. BAP 2002) (holding that "it is **the debtor's** required duty to file a statement with the court to show any change of address from that previously provided. *See* Fed. R. Bankr. P. 4002(5). The debtor who fails to keep the court advised of his proper mailing address has only himself to blame." (emphasis added)).

Federal Rule of Bankruptcy Procedure 8002(c) is not discretionary and despite Appellant's statement in his reply that he "had no reason to believe he needed to do anything with his address," 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, it is HEREBY ORDERED that:

- (1) This appeal is DISMISSED for lack of jurisdiction on the ground that it was untimely filed.
- (2) All pending deadlines are TERMINATED.
- (3) The Stay Motion is DENIED AS MOOT.

For the Panel:



Blaine F. Bates
Clerk of Court