

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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RYSZARD MICHAL BORYS,

Appellant,

v.

CHASE HOME FINANCE, LLC,

Appellee.  
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OPINION and  
ORDER

10-cv-761-bbc

On June 26, 2009, appellant Ryszard M. Borys, pro se, filed a chapter 7 bankruptcy petition in this district, initiating an automatic stay pursuant to 11 U.S.C. § 362 that halted “any act to obtain possession of property of the estate” and “any act to collect, assess, or recover a claim” from appellant. 11 U.S.C. § 362(a)(2), (6). Appellee Chase Home Finance, LLC, a creditor of appellant, filed a motion in the bankruptcy court for relief from the stay under § 362(d). At a hearing held on August 30, 2010 at which both parties were present, the bankruptcy court granted appellee’s motion and on September 8, 2010, the bankruptcy court signed and entered a final order granting relief from the stay. Appellant filed a notice of appeal on October 3, 2010, and the appeal was docketed in this court on December 3, 2010. Appellant has not filed a brief in support of the appeal and it is not clear what legal

or factual challenges he is raising in his appeal. (Appellant's brief was due on December 21, 2010).

Now before the court is appellee's motion to dismiss the appeal, dkt. #3, as untimely. I conclude that appellant's notice of appeal was untimely because it was filed outside the time limits set forth in Fed. R. Bank. P. § 8002(a). Because the time limit is jurisdictional and appellant has provided no persuasive reason why it should be waived, I will dismiss the appeal for lack of jurisdiction.

#### DISCUSSION

Under Fed. R. Bankr. P. 8002(a), parties seeking to appeal an order or judgment of a bankruptcy court must file a notice of appeal within 14 days of the entry of the judgment or order from which they are appealing. When an appellant fails to file a notice of appeal within the time required by 8002(a), the district court has no jurisdiction over the matter. In re Salem, 465 F.3d 767, 774 (7th Cir. 2006); In re Bond, 254 F.3d 669, 673 (7th Cir. 2001) (deadlines in 8002(a) are "mandatory and jurisdictional"); In re Schultz Manufacturing Fabricating Co., 956 F.2d 686, 689 (7th Cir. 1992) (district court deprived of jurisdiction when appellant fails to file timely notice of appeal). Under Rule 8002(c)(1), a bankruptcy judge may extend the time for filing the notice of appeal by any party in some circumstances. However, the bankruptcy court may not extend the time to file a notice of

appeal from an order granting relief from an automatic stay under § 362. Fed. R. Bankr. P. 8002 (c)(1)(A).

In this case, appellant filed his notice of appeal 25 days after the bankruptcy court entered a final order granting appellee relief from the stay. Appellant contends that the 14-day window should not apply to him because neither the bankruptcy clerk nor appellee notified him of the September 8 order or his time to appeal. However, the bankruptcy code provides that “[l]ack of notice of the entry [of an order or judgment] does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed. . .” Fed. R. Bankr. P. 9022. Moreover, it is undisputed that appellant was present at the August 30 hearing in which the bankruptcy judge orally granted appellee’s motion for relief from the automatic stay, so it is unclear what ground he might have to claim lack of notice regarding the order. Appellant suggests that this court should review the record and conclude that he is entitled to relief. Even if appellant is proceeding pro se, this court cannot make up arguments for him. Therefore, I conclude that this court lacks jurisdiction to consider his appeal.

#### ORDER

IT IS ORDERED that appellee Chase Home Finance, LLC’s motion to dismiss, dkt. #3, is GRANTED and this appeal is DISMISSED for lack of jurisdiction. The clerk of court

is directed to close the case.

Entered this 31st day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge