

Time to Appeal Under Bankruptcy Rule 8002(a)(1): What the Right Hand Giveth, the Left Hand Taketh Away

Articles October 30, 2020

By Hon. Judith K. Fitzgerald (Ret.)

Here's an interesting read: *LaTasha Tennial v. REI Nation, LLC*, No. 20-5358, — F.3d —, 2020 WL 6304352 (6th Cir. Oct. 28, 2020).

After a lengthy analysis of prior cases, all of which held that Bankruptcy Rule 8002(a)(1)'s 14-day time limit for filing a notice of appeal was jurisdictional and, if missed, deprived the appellate court of the power to adjudicate the appeal, the Court of Appeals for the Sixth Circuit held that the Rule "does not create a jurisdictional imperative." *LaTasha Tennial v. REI Nation, LLC*, No. 20-5358, — F.3d —, 2020 WL 6304352 at *4 (6th Cir. Oct. 28, 2020). In short, failure to comply with the Rule does not impact the court's authority to rule on the merits. That sounds like good news for appellants who miss the deadline. But not so fast!

Despite its decision that Rule 8002 is not jurisdictional in its import, the Court dismissed the appeal. Why? Because compliance with the Rule is mandatory and appellant missed the deadline. The Court wrote: "Bankruptcy appeals 'shall be taken in . . . the time provided by Rule 8002 of the Bankruptcy Rules,' 28 U.S.C. § 158(c)(2), and Bankruptcy Rule 8002(a)(1) provides that an appeal 'must be filed . . . within 14 days.'" *Id.* (Emphases in original).

Of course, Bankruptcy Rule 8002(d) authorizes limited extensions of the deadline, provided that a request is filed within the mandatory periods stated in Rule 8002(d)(1), and that may give some hope to the recalcitrant appellant. But then again, maybe not – at least not for LaTasha Tennial. Her appeal sought to overturn an order that granted relief from stay. Among certain other exceptions to a court's ability to grant extensions of the time to file an appeal, Bankruptcy Rule 8002(d)(2)(A) precludes extensions when a party appeals from an order granting relief from an automatic stay. The result: no appeal for Ms. Tennial.

The practice point is simple: be certain to file your appeal on time.

For additional information contact Judith Fitzgerald.