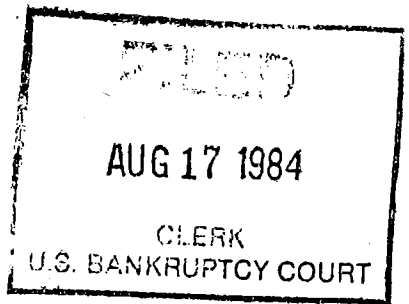


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



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In re:

Case Number:

MIDWEST PARTNERS,

LF-84-00492

Debtors.  
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FINDINGS OF FACT, CONCLUSION OF LAW  
AND  
ORDER DENYING REQUEST FOR EXTENSION OF TIME TO APPEAL

Debtor Midwest Partners, by Attorney Donald J. Harman, having filed a Request for Extension of Time to Appeal; the Court, having reviewed the complete record and file herein, FINDS THAT:

1. On July 12, 1984, this Court entered a decision and Order in the above captioned proceeding granting the motion of Patricia F. Wernecke to have certain property declared not to be a part of the bankruptcy estate.

2. July 23, 1984, was the last day for a timely notice of appeal of said Order. Fed.R.Bankr.P. 8002(a).

3. On August 13, 1984, the Debtor filed its Request for Extension of Time to Appeal.

4. The request is made on the ground of excusable neglect in that the law firm of Chernov & Croen handled the briefing argument and the presentation of the case

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<sup>1</sup> An identical decision and Order is entered this day in In re Phoenix Partners, LF11-84-00493.

to the court and that the law firm of Donald J. Harman, Ltd., was playing a secondary or backup role in the handling of these matters. When the decision of Judge Frawley was handed down, the law firm of Chernov & Croen had not been paid by debtors the amount they required to continue representation by them and although they had not as yet discontinued representation of debtors, they did nothing with respect to the filing of the appeal, although it was well understood that an appeal was to be taken in the event of an adverse decision. Chernov & Croen assumed that the law firm of Donald J. Harman, Ltd. would prepare the notice of appeal.

Request for Extension (filed August 13, 1984).

5. "A request to extend the time for filing a notice of appeal . . . made no more than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect . . ." Fed.R.Bankr.P. 8002(c).

6. Excusable neglect is present only when circumstances are unique or extraordinary, for example when a party fails to learn of the entry of an order or when the sudden illness or death of an attorney or party prevents the timely filing of a notice of appeal. 13 J. Moore & L. King, Collier on Bankruptcy para. 802.07[7] (14th ed. 1977).

7. The standard [of excusable neglect] is a strict one. . . . Excusable neglect has not been found when a secretary diaried the wrong date for appeal period expiration, when office personnel mishandled the mail, when counsel made a mistake, when counsel was preoccupied with other business, when counsel mailed a letter to his client at the wrong address, thereby failing to reach the client, or when the notice of appeal was mailed to the wrong bankruptcy court. This strict standard has been followed in the United States Bankruptcy Courts.

In re Sheldon's Inc. of Maine, 34 B.R. 277, 279 (Bankr.D.Me.1983)  
(citations omitted).

8. A client's failure to pay attorneys fees does not excuse neglect. In re Zeller, 38 B.R. 739, 742 (Bankr.9th Cir.).

9. Confusion regarding which firm would file an appeal is in the nature of those errors which are found in paragraph 7, supra.

CONCLUSION OF LAW


The facts of this case do not demonstrate excusable neglect. See also Link v. Wabash R. Co., 370 U.S. 626, 633-634, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962) (client cannot avoid unexcused conduct of counsel).

ORDER

IT IS ORDERED THAT the Request for Extension of Time to Appeal be, and the same hereby is, DENIED, without costs.

Dated: August 17, 1984.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge