

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DISTRICT OF NEBRASKA

AUG 17 1988

IN RE)
)
MELVIN E. HUBKA,)
)
Debtor, Appellant,)
)

William L. Olson, Clerk
CV 87-0-277 Deputy
BK 85-2819

This matter is before the Court on the motion filed by the United States of America, on behalf of the Commodity Credit Corporation to dismiss the above-captioned appeal. For the reasons set forth below, the Court finds that the motion should be granted.

(1) The appellant's notice of appeal was docketed in the district court on April 15, 1987.

(2) On August 6, 1987, the United States moved to dismiss the appeal for the reason that the appellant failed to file a designation of record, or statement of issues as required by Bankruptcy Rule 8006.

(3) On September 15, 1987, Judge Beam (then District Court Judge) entered an order requiring appellant to show cause why the appeal should not be dismissed. The appellant answered on September 30, 1987. Judge Beam thereafter entered an order on October 9, 1987, requiring appellant to file the aforesaid items within fourteen (14) days or the matter would be subject to immediate dismissal.

FILED
DISTRICT OF NEBRASKA
AT _____ M
AUG 23 1988
Judith M. Napier, Clerk
U.S. Bankruptcy Court - Lincoln
By _____ Deputy

607-11

(4) On October 23, 1987, appellant moved for an extension of time and also moved to proceed in forma pauperis. On November 16, 1987, Judge Beam denied the request to appear in forma pauperis, but granted an additional twenty (20) days to file the designation of record.

(5) On November 30, 1987, the appellant renewed his application to proceed in forma pauperis and on December 7, 1987, filed yet another motion for enlargement of time. On December 21, 1987, Judge Strom denied the application to proceed in forma pauperis and granted one final twenty-day enlargement of time. The order entered by Judge Strom provided this caution to appellant: ". . . submission of any further requests therefore should not be made with expectation of favorable consideration."

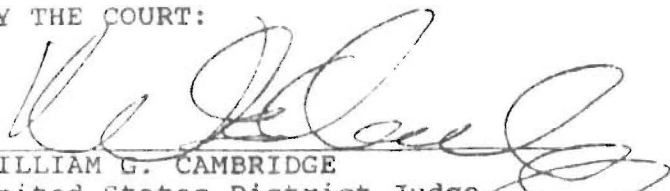
(6) Despite this cautionary order, on January 5, 1988, appellant requested another enlargement of time. This motion came on for hearing before the United States Magistrate on January 29, 1988. On February 1, 1988, the magistrate entered an order denying the motion for enlargement of time.

(7) Because of the order entered on February 1, 1988, the appellant's allotted time for filing the aforesaid items was long expired. However, appellant filed the items after the expiration of time. On February 29, 1988, a record on appeal was filed by the clerk of the bankruptcy court. However, since the requested extension of time was denied, this Court finds that the action by the appellant in filing the required items was untimely and was not permitted by the Court's order of February 1, 1988.

IT THEREFORE IS ORDERED that the United States' motion is granted, and this appeal is dismissed.

Dated August 17th, 1988.

BY THE COURT:


WILLIAM G. CAMBRIDGE
United States District Judge