

ELECTRONIC CITATION: 2009 FED App. 0002P (6th Cir.)
File Name: 09b0002p.06

BANKRUPTCY APPELLATE PANEL OF THE SIXTH CIRCUIT

In re: BLACK DIAMOND MINING CO., LLC,)
et al.,)

Debtors.)

_____)
Black Diamond Mining Co., LLC, Black)
Diamond Land Co., LLC, FCDC Coal, Inc.,)
Martin Coal Processing Corp., Spurlock Energy)
Corp., Turner Elkhorn Mining Co., Wolverine)
Resources, Inc., and King & Spalding LLP,)

Appellants,)

No. 08-8038

v.)

Official Committee of Unsecured Creditors,)

Appellee.)

Filed: March 19, 2009

Before: McIVOR, RHODES, and SHEA-STONUM, Bankruptcy Appellate Panel Judges.

ORDER

King & Spalding LLP appeals the bankruptcy court’s order of April 29, 2008, denying the debtors’ application to approve its employment. Before the Panel can address the merits of the appeal, we must determine our jurisdiction over the appeal. *BNI Telecommunications, Inc. v. Lomaz*

(*In re BNI Telecommunications, Inc.*), 246 B.R. 845, 848 (B.A.P. 6th Cir. 2000). For that reason, the Panel requested the parties to be prepared to address jurisdictional issues at oral argument.

The Panel has jurisdiction to hear appeals from final judgments of bankruptcy courts. 28 U.S.C. §§ 158(a)(1), (b)(1), and (c)(1).

The Supreme Court has held that in a civil case, an order disqualifying an attorney is not a final order. *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 105 S. Ct. 2757 (1985). The Supreme Court had previously reached this same result for an order denying a motion to disqualify an attorney. *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 101 S. Ct. 669 (1981). The Supreme Court has further held that the same result applies to an order disqualifying the defendant's attorney in a criminal case. *Flanagan v. United States*, 465 U.S. 259, 104 S. Ct. 1051 (1984).

In the bankruptcy context, the Sixth Circuit has held that an order denying an application to appoint counsel is not a final order. *Taunt v. Vining (In re M.T.G., Inc.)*, 403 F.3d 410 (6th Cir. 2005).

Based on this authority, the Panel must conclude that the order from which King & Spalding LLP appeals is not a final order. Therefore, the Panel lacks jurisdiction.

Accordingly, the appeal is DISMISSED.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green

Clerk