

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

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Case No. **CV 12-07175 DMG**Date **June 28, 2013**

Title ***In Re: Allan Kent Kurtz, Allan Kent Kurtz v. 3H Corp (1:11-bk-17064, 1:11-ap-1575)*** Page **1 of 2**

Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE****VALENCIA VALLERY**

Deputy Clerk

NOT REPORTED

Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

Proceedings: IN CHAMBERS—ORDER TO FILE SUPPLEMENTAL RECORD

Appellant Allan Kent Kurtz seeks to appeal a judgment from the Bankruptcy Court granting summary judgment to Appellee 3H Corporation on the ground that a prior arbitration proceeding precludes the bankruptcy court from revisiting the issue. Appellant's excerpts of the record include passages from the arbitration award, but not the arbitration award in its entirety. (R. at 25-26.) [Doc. # 18.] Inexplicably, neither side saw fit to include the full text of the Arbitrator's Award in the appendix on appeal. The Court requires the full text of the arbitration award to understand the context of the decision.

The Local Rules Governing Bankruptcy Appeals, Cases, and Proceedings and the Federal Rules of Bankruptcy Procedure are silent as to the procedure regarding modification of the record upon appeal to a district court. *See* Local Rules, Ch. IV; Fed. R. Bankr. P. 8019. When the Local Bankruptcy Rules and Federal Rules of Bankruptcy Procedure are silent, the Rules of the United States Court of Appeals for the Ninth Circuit and the Federal Rules of Appellate Procedure apply. *See, e.g., In re Cloobek*, 2:10-CV-01278-GMN, 2011 WL 1899306 (D. Nev. May 19, 2011); *In re Schugg*, CV07-1962-PHX-JAT, 2009 WL 1635379 (D. Ariz. June 11, 2009).

Rule 10(e) of the Federal Rules of Appellate Procedure states, in relevant part:

- (2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:
 - (A) on stipulation of the parties;
 - (B) by the district court before or after the record has been forwarded; or

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(C) by the court of appeals.

“Rule 10(e) cannot be used to add to or enlarge the record on appeal to include material which was not before the district court.” *United States v. Walker*, 601 F.2d 1051, 1054 (9th Cir.1979). Here, this Court sits in appellate review, and accordingly may order a supplemental record under Rule 10(e), but only with respect to those items presented to the Bankruptcy Court. The Bankruptcy Court appears to have had the benefit of the full text of the arbitration award. (R. at 2.)

Accordingly, Appellant is hereby **ORDERED** to file the full text of the arbitration award as a Supplemental Appendix, by no later than **July 5, 2013**.

IT IS SO ORDERED.