

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 21-cv-22723-BLOOM

ALBERTO SOLER,

Appellant,

v.

UNITED STATES
45TH ADMINISTRATION, *et al.*,

Appellees.

ORDER ON MOTION TO VACATE

THIS CAUSE is before the Court upon Appellant Alberto Soler’s (“Appellant”) Motion to Vacate the Bankruptcy Court’s Dismissal Order of Untimely Appeal Filing, ECF No. [8] (“Motion”), filed on November 16, 2021. The Court has reviewed Motion, the record, the applicable law, and is otherwise fully advised. For the reasons set forth below, the Motion is denied.

On June 24, 2021, in the related Bankruptcy Court proceeding (Case No. 21-1054-BKC-AJC-A), the Bankruptcy Court entered an Order Granting Motion for Clarification, BK-ECF No. [54] (“First Order”). On July 12, 2021, the Bankruptcy Court entered an Order Denying Motion to Strike, BK-ECF No. [76], (“Second Order”). Pursuant to Rule 8002(a)(1), “notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed.” *See* Fed. R. Bankr. P. 8002(a)(1). On July 27, 2021, one day after the 14 day deadline to file an appeal of the Second Order, the Clerk filed Appellant’s Notice of Appeal (“Appeal”) appealing both Bankruptcy Court Orders. *See* ECF No. [1]. On July 30, 2021, the

Bankruptcy Court entered an Order Dismissing Bankruptcy Appeal as untimely. *See* ECF No. [5].¹

In the instant Motion, Appellant purports to have filed his Appeal on July 26, 2021, one day before the deadline to appeal, by emailing his petition to FLSB-EMERGENCY-FILINGS@flsb.uscourts.gov. *See* ECF Nos. [8], [8-1] at 6. According to Appellant, Appellant emailed his Appeal at 11:52 p.m. on July 26, 2021. *See* ECF No. [8-1] at 6. As such, Appellant requests that the Court vacate the Order Dismissing Bankruptcy Appeal.

Pursuant to Administrative Order 2021-07,

If a person not represented by counsel needs to file a bankruptcy petition and accompanying documents (“petition”), or if a debtor or party in interest in a pending bankruptcy case or proceeding needs to file a document with the Clerk of Court (“the Clerk”), and cannot do so in-person or by timely mailing the documents to the Clerk, they may transmit the documents in Portable Document Format (PDF) to the Clerk by electronic mail (“electronic transmission”) to the following emergency email address: FLSB-EMERGENCY-FILINGS@flsb.uscourts.gov. Documents that are electronically transmitted to the Clerk shall not be deemed to have been “FILED” until the filer receives an electronic reply by the Clerk confirming the filing and (if applicable) the case number. *Documents electronically transmitted for filing after 4:00 p.m. will be stamped “FILED” the next business day.*

Administrative Order No. 2021-07 (Aug. 6, 2021) (emphasis added).

Because Appellant filed the appeal after 4:00 p.m. on July 26, 2021, the Appeal was appropriately filed on the next business day, July 27, 2021. Therefore, Appellant’s Appeal was untimely.

Accordingly, it is **ORDERED AND ADJUDGED** that the Motion, **ECF No. [8]**, is **DENIED**.

¹ The Order Dismissing Bankruptcy Appeal states that the date of the First Order is June 23, 2021 and the date of the Second Order is July 9, 2021. *See* ECF No. [5]. The relevant dates for the purposes of Rule 8002(a)(1) are the dates of entry, which is June 24, 2021, for the First Order and July 12, 2021, for the Second Order. *See Jones v. Gann*, 703 F.2d 513, 514 (11th Cir. 1983) (“The time for filing a notice of appeal begins to run not on the date that the judgment is filed but on the date the judgment is actually entered on the docket.”).

DONE AND ORDERED in Chambers at Miami, Florida, on November 17, 2021.



BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

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