

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**IN RE: ACADEMY DRIVE
DEVELOPMENT, LLC**

CIVIL ACTION

No. 21-1710

SECTION I

ORDER & REASONS

Before the Court is the motion¹ by appellee Hancock Whitney Bank (“HWB”) to dismiss the appeal by Academy Drive Development, LLC of an August 24, 2021 order of dismissal issued by the United States Bankruptcy Court. The motion was submitted on December 8, 2021, and appellant Academy Drive filed no opposition. Accordingly, the Court deems the motion to be unopposed. The Court will grant the motion for the reasons set forth below.

In support of its motion, HWB argues that Academy Drive has failed to timely file a statement of issues and a designation of items to be included in the record, and that Academy Drive’s notice of appeal² is deficient in several respects.³

“An appellant’s failure to take any [procedural] step [set forth in the Federal Rules of Bankruptcy Procedure] other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the district court . . . to act as it considers appropriate, including dismissing the appeal.” Fed. R. Bankr. P. 8003(a)(2). In determining what action to take under this provision, “the district court must keep in mind that [d]ismissal is a harsh and drastic sanction that is not

¹ R. Doc. No. 2.

² R. Doc. No. 1.

³ R. Doc. No. 2-1, at 4.

appropriate in all cases, even though it lies within the district court’s discretion.” *In re Ulmer*, 277 F.3d 1372 (5th Cir. 2001) (quoting *Zer-Ilan v. Frankford (In re CPDC Inc.)*, 221 F.3d 693, 699 (5th Cir. 2000)).

Under the Federal Rules of Bankruptcy Procedure, the appellant must file “a designation of the items to be included in the record on appeal and a statement of the issues to be presented within 14 days after . . . the appellant’s notice of appeal as of right becomes effective” Fed. R. Bankr. P. 8009(a)(1). Academy Drive filed its notice of appeal on September 17, 2021, and, to date, has not filed a designation of the items to be included in the record on appeal or a statement of the issues.

Additionally, HWB argues⁴ that the notice of appeal violates Rule 8003(a)(3)(A), which states that a notice of appeal must “conform substantially to the appropriate Official Form.” Fed. R. Bankr. P. 8003(a)(3)(A).⁵ To the extent that the notice of appeal is deficient, that deficiency is not so substantial that it would warrant dismissal of the appeal.

However, dismissal is warranted due to Academy Drive’s failure to timely file a designation of the items to be included in the record on appeal and a statement of

⁴ R. Doc. No. 2-1, at 4.

⁵ The appropriate Official Form in this case is Official Form 417A. First, HWB asserts that Academy Drive failed to list the other parties to the appeal and their attorneys, which is required information in Form 417A. *Id.* However, while the notice itself does not contain this information, the Certificate of Service attached to the notice contains the names of the parties and their counsel. Second, HWB asserts that Academy Drive failed to designate the subject of the appeal and to attach the order subject to the appeal. *Id.* This is incorrect. The notice of appeal states that Academy Drive is appealing the “Order of Dismissal dated August 24, 2021,” R. Doc. No. 1, and the same order is attached as an exhibit to the notice of dismissal, R. Doc. No. 1-3.

the issues. The instant motion to dismiss the appeal, which was filed on November 15, 2021, put Academy Drive on notice of these deficiencies in its prosecution of the appeal. Yet Academy Drive neither opposed the motion, nor sought leave of court to file the requisite documents despite their untimeliness. The appeal cannot proceed without these documents. In the absence of any attempt by Academy Drive to explain or rectify these procedural deficiencies, dismissal of the appeal is appropriate. Accordingly,

IT IS ORDERED that the motion to dismiss is **GRANTED** and the appeal is **DISMISSED WITH PREJUDICE**.

New Orleans, Louisiana, December 13, 2021.

A handwritten signature in black ink, appearing to read "Lance Africk", written over a horizontal line.

LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE