

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

IN RE: JOHN BRINAR
Debtor

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CAUSE NO. 1:10CV413 LG-RHW
BANKRUPTCY CASE NO.
09-052635

ORDER DISMISSING APPEAL

THIS CAUSE COMES BEFORE THE COURT *sua sponte*. Appellant John Brinar filed a Notice of Appeal in his bankruptcy case, and on August 18, 2010, the bankruptcy clerk transmitted the Notice and the record on appeal to this Court, noting in the transmittal letter that the Appellant had not paid the filing fee. The next day, the clerk of this Court sent a letter to the parties advising that the appeal had been docketed, as required by Rule 8007 of the Federal Rules of Bankruptcy Procedure. There has been no other activity in this case.

Rule 8009(a)(1) of the Bankruptcy Rules requires the appellant in a bankruptcy appeal to file a brief with the district court “within 14 days after entry of the appeal on the docket pursuant to Rule 8007,” unless the district court alters this requirement by local rule. There is no local rule altering the requirement in this District. *See In re Salter*, 251 B.R. 689, 691 (S.D. Miss. 2000). Thus, Brinar was required to file a brief by early September 2010.

Rule 8001(a) of the Bankruptcy Rules allows the district court to dismiss an appeal if the appellant fails to take any step required under the rules for proper prosecution of an appeal. The United States Court of Appeals for the Fifth Circuit has

affirmed dismissals of bankruptcy appeals when the appellant failed to file a brief within the required time. *Id.* (citing *International Brotherhood of Teamsters v. Braniff Airways, Inc.*, 774 F.2d 1303 (5th Cir. 1985) and *Pyramid Mobile Homes, Inc. v. Speake*, 531 F.2d 743 (5th Cir. 1976)). Because Appellant has failed to take any action to prosecute his appeal - within the time allowed by the Bankruptcy Rules or otherwise - the appeal will be dismissed.

IT IS THEREFORE ORDERED AND ADJUDGED that the appeal of Appellant John Brinar, filed August 18, 2010, is **DISMISSED** pursuant to Rule 8001(a) of the Federal Rules of Bankruptcy Procedure.

SO ORDERED AND ADJUDGED this the 13th day of December, 2010.

s/ Louis Guirola, Jr.
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE