

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:	:	
	:	24-CV-4061 (JMF)
ALI AFSHAR SHANDIZ,	:	
	:	<u>MEMORANDUM OPINION</u>
Debtor.	:	<u>AND ORDER</u>
	:	
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JESSE M. FURMAN, United States District Judge:

In this bankruptcy appeal, Appellant Ali Afshar Shandiz — proceeding without counsel — appears to challenge the dismissal of his underlying bankruptcy case for failure to pay the required filing fee,¹ In his brief on appeal, Shandiz asserts that the Bankruptcy Court denied his motion for a waiver of the filing fee on the ground that he owned real estate assets valued at over \$1.5 million, “despite the illiquidity of these assets and Appellant’s inability to convert them into cash to cover the filing fee.” ECF No. 8, at 2. But nothing in the record indicates that the Bankruptcy Court denied the motion for a fee waiver on the merits, let alone on that ground. Instead, Shandiz’s initial motion — filed on December 3, 2023 — was denied on December 5, 2023, due only to technical deficiencies and that denial was explicitly “without prejudice” to

¹ It is not entirely clear from which Order or Orders of the Bankruptcy Court Shandiz appeals. Compare ECF No. 1, ¶¶ 2-3, 5 (indicating that Shandiz appeals from an Order entered on May 21, 2024), with ECF No. 1-1 (indicating that Shandiz appeals from an Order entered on May 15, 2024). That confusion is compounded by Shandiz’s failure to comply with Rule 8003(3) of the Federal Rules of Bankruptcy Procedure, which requires that a notice of appeal “be accompanied by the judgment, order, or decree, or the part of it, being appealed.” The Court could dismiss the appeal on that basis alone. See, e.g., *Mergenthaler v. Osekavage*, No. 16-CV-2466 (JS), 2018 WL 451642, at *2 (E.D.N.Y. Jan. 17, 2018) (citing Fed. R. Bankr. P. 8003(3)). But mindful of Shandiz’s *pro se* status, the Court will construe his appeal to be from the Order entered on May 14, 2024, dismissing the case “[i]f the filing fee [was] not received by the Clerk of Court by May 15, 2024 at 4:00 p.m.” Bankr. Docket ECF No. 29.

renewal within thirty days. Case No. 23-11933 (LGB) (Bankr. S.D.N.Y.) (“Bankr. Docket”), ECF No. 4. Yet Shandiz did not renew his motion within thirty days. Instead, he waited until May 14, 2024 — the date of a hearing on whether his case should be dismissed for failure to pay the fee, a hearing for which he received notice on or about April 23, 2024, Bankr. Docket ECF No. 20 — to file a motion for extension of time to pay the fee (on the ground that he could not make payment in time, not that he could not pay the fee altogether), a motion for a fee waiver (unaccompanied by an actual waiver application or any evidence), and a motion for a fee waiver and reconsideration of the December 5, 2023 denial of his initial motion (on the ground that he had not received that order), motions that the Bankruptcy Court denied. Bankr. Docket ECF Nos. 28-29, 31-34. At the hearing (a recording of which the Court has reviewed), the Bankruptcy Court directed Shandiz to pay the fee by the end of the day, and Shandiz indicated that he would do so.² But he did not.

Given that record, and the discretion owed to the Bankruptcy Court with respect to matters of case management, *see, e.g., Waske v. Lehman Bros. Holdings Inc.*, No. 20-CV-5083 (RA), 2021 WL 4523495, at *6 (S.D.N.Y. Sept. 30, 2021) (“A bankruptcy court, like a district court, has wide latitude in determining how to manage its docket most efficiently. . . . Case management decisions are thus reviewed for abuse of discretion.”), Shandiz is not entitled to relief in this appeal. Shandiz does not challenge the Bankruptcy Court’s December 5, 2023 denial of his initial motion for a fee waiver due to technical deficiencies — a denial that was “without prejudice” to a renewed application. And the Court cannot say that the Bankruptcy Court abused its discretion when it denied Shandiz’s belated motion for an extension of time to

² The colloquy between the Bankruptcy Court and Shandiz regarding dismissal of his case for failure to pay the filing fee starts at 2:00:12 of the recording. Shandiz indicates that he will pay the fee by day’s end at 2:03:08.

pay the filing fee or his untimely second motion for a fee waiver (or, in the alternative, reconsideration of the December 5, 2023 denial of the first motion). *See, e.g., In re Mark IV Industries Inc.*, No. 11-CV-6758 (GBD), 2012 WL 4096249, at *2 (S.D.N.Y. Sept. 18, 2012) (noting that discretionary decisions are “reviewed under the deferential abuse of discretion standard” and that “[a] ruling is an abuse of discretion only if the bankruptcy court bases its ruling on a mistaken application of the law or a clearly erroneous finding of fact” (internal quotation marks omitted) (quoting *Peskin v. Picard*, 440 B.R. 579, 584 (S.D.N.Y. 2010))).³ Nor can the Court say that the Bankruptcy Court abused its discretion, or committed error, when it then dismissed Shandiz’s case for failure to pay the fee — especially insofar as Shandiz, when facing the music, did not maintain that he could not pay the fee; to the contrary, he represented that he would pay the fee and then did not.⁴

For the foregoing reasons, the Bankruptcy Court’s Order dismissing Shandiz’s case must be and is AFFIRMED. The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from the order would not be taken in good faith, and therefore IFP status is denied for the purpose of

³ Whether Shandiz received the December 5, 2023 denial of his first waiver motion is of no moment, as he was on notice as of April 23, 2024, that his case was in danger of being dismissed for “for failure to pay the required filing fee” and that a hearing would be held “to consider dismissal” on May 14, 2024. *See* Bankruptcy Court Docket No. 20. Yet he waited until the date of the hearing to seek further relief.

⁴ On May 21, 2024, Shandiz filed yet another motion for a fee waiver, accompanied by a letter requesting reconsideration of the earlier denial. *See* Bankr. Docket, ECF Nos. 39, 41. But Shandiz made these filings on May 21, 2024 (the same day he filed his Notice of Appeal), *after* the case had already been dismissed. Moreover, the Bankruptcy Court has not ruled on that belated request (presumably because of this appeal). Accordingly, that motion (which could perhaps be construed to be a motion, pursuant to Rule 9024 of the Federal Rules of Bankruptcy Procedure, for relief from the Order of dismissal) is not reviewable in this appeal. Instead, the Court leaves it to the Bankruptcy Court to consider in the first instance.

an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Clerk of Court is directed to enter judgement consistent with this Memorandum Opinion and Order, to mail a copy of this Memorandum Opinion and Order to Shandiz, and to close the case.

SO ORDERED.

Dated: July 26, 2024
New York, New York

A handwritten signature in black ink, appearing to read 'Jesse M. Furman', written over a horizontal line.

JESSE M. FURMAN
United States District Judge