

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In re:

ORDER

WEBSTER HOSPITALITY DEVELOPMENT, LLC,

Case No. 09-CV-6482 CJS

BK 2-09-21963 JCN

On August 27, 2009, the United States Bankruptcy Court for the Western District of New York dismissed the instant bankruptcy case, Case Number 2-09-21963. Fourteen (14) days later, on September 10, 2009, Lawrence Frumusa (“Appellant”), proceeding *pro se*, filed a Notice of Appeal (Bankruptcy Docket No. [#45]) in Bankruptcy Court. On September 23, 2009, Appellant filed the instant action.

It is clear that under the Bankruptcy Rules, a notice of appeal must be filed within *ten calendar days* of the date of entry of the order being appealed:

Under Rule 8002 of the Federal Rules of Bankruptcy Procedure, a “notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from.” Rule 8002(a), Fed. R. Bankr.P. When computing time under the Bankruptcy Rules, weekends and holidays are included unless the “the period of time prescribed or allowed is less than 8 days.” Rule 9006(a), Fed. R. Bankr.P.

In re Schapiro, No. 06 Civ. 2685(DLC), 2006 WL 2355000 at *1 (S.D.N.Y. Aug. 15, 2006). Moreover, “[c]ompliance with Rule 8002 is ‘mandatory and jurisdictional.’” *Id.* at *2 (quoting *In re Siemon*, 421 F.3d 167, 169 (2d Cir.2005)). “[I]n the absence of a timely notice of appeal in the district court, the district court is without jurisdiction to consider the appeal, regardless of whether the appellant can demonstrate ‘excusable neglect.’” *In re Siemon*, 421 F.3d at 169 (Affirming dismissal of *pro se* appellant’s untimely appeal).

Here, Appellant filed his notice of appeal fourteen days after entry of the order dismissing the bankruptcy case, which was four days too late. Consequently, the Court lacks jurisdiction. Accordingly, it is hereby

ORDERED, that this action is dismissed. The Clerk of the Court is directed to close this action.

Dated: Rochester, New York
October 14, 2009

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge