

HONORABLE RICHARD A. JONES

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE OCEAN ALEXANDER  
INVESTMENTS, INC.,

Debtor,

JEROME SHULKIN &  
SHULKIN HUTTON INC.,

Appellants,

v.

TERRENCE BENISH,

Appellee.

CASE NO. C13-2328 RAJ

BANKR. NO. 11-10628 KAO

ORDER

This matter comes before the court on a bankruptcy appeal filed by counsel for the debtor, Jerome Shulkin and Shulkin Hutton Inc., P.S. (collectively, "Shulkin"). Dkt. # 6. As a preliminary matter, Shulkin's opening and reply briefs are incoherent, difficult to follow, and violate the Federal Rules of Bankruptcy Procedure ("FRBP"). Although Shulkin identifies ten issues on appeal, Shulkin's argument fails to "contain the

1 contentions of the appellant with respect to the issues presented, and the reasons therefor,  
2 with citations to the authorities, statutes and parts of the record relied on.” FRBP §  
3 8010(a)(1)(E). The court could dismiss the appeal for violation of the FRBP, particularly  
4 where it is counsel for debtor who has appealed the underlying bankruptcy case. *See*  
5 *Morrissey v. Stuteville*, 349 F.3d 1197, 1189-90 (9th Cir. 2003) (no abuse of discretion  
6 for dismissing bankruptcy appeal for egregious non-compliance with non-judicial  
7 procedural requirements). As Mr. Shulkin indicates, he has been practicing law for  
8 thirty-five years, and should be able to follow basic rules of procedure.

9 However, there is another basis for dismissing this appeal. Shulkin does not have  
10 prudential standing to appeal the underlying bankruptcy decision.<sup>1</sup>

11 Constitutional<sup>2</sup> and prudential standing are threshold issues in all federal cases that  
12 must be satisfied before the court can exercise jurisdiction. *Warth v. Seldin*, 542 U.S. 1,  
13 11 (2004). Prudential standing requires a plaintiff to (1) assert his own rights, rather than  
14 rely on the rights or interests of third parties; (2) allege an injury that is more than a  
15 generalized grievance; and (3) allege an interest that is arguably within the zone of  
16 interest protected or regulated by the statute or constitutional guarantee in question.  
17 *Hong Kong Supermarket v. Kizer*, 830 F.2d 1078, 1081 (9th Cir. 1987). The court must  
18 also consider prudential appellate standing, which involves limitations on standing to  
19 appeal in bankruptcy proceedings. *See In re Thorpe Insulation Co.*, 677 F.3d 869, 884  
20 (9th Cir. 2012). Prudential appellate standing requires that a party be directly and  
21 adversely affected by the order of the bankruptcy court—that it diminish the appellant’s  
22 property, increase its burdens, or detrimentally affect its rights. *Id.* Courts have called

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24 <sup>1</sup> The court notes that it could have also dismissed the appeal on a number of other  
25 grounds, including, but not limited to, failure to timely appeal the confirmation order and the  
26 disallowance order, among others.

27 <sup>2</sup> The court only addresses prudential standing in light of the basic policy of federal  
courts against unnecessary determination of constitutional issues. *Hong Kong Supermarket*, 830  
F.2d at 1081.

1 appellate standing the “person aggrieved” test. *In re Fondiller*, 707 F.2d 441, 443 (9th  
2 Cir. 1983). Under the “person aggrieved” test, there are three additional requirements:  
3 (1) appellant had adequate notice of the bankruptcy court proceedings; (2) appellant  
4 objected to the request for relief leading to the order appealed; and (3) appellant appeared  
5 at the hearing on the requested relief. *See In re Commc’n W. Fin. Corp.*, 761 F.2d 1329,  
6 1335 (9th Cir. 1985) (“even though we agree that attendance and objection should usually  
7 be prerequisites to fulfilling the ‘person aggrieved’ standard, the Trustee’s failure to give  
8 the investors proper notice that the plan avoided their security interests excuses them  
9 from fulfilling these prerequisites in the instant case.”).

10 Shulkin identifies the following issues: (1) whether his November 14, 2011  
11 submission of an “administrative claim” was in fact an administrative claim in a separate  
12 class from general creditors; (2) whether the plan administrator, Terrence Benish, was  
13 ordered to be a trustee in the bankruptcy case; (3) whether the plan administrator, via his  
14 counsel, Michael Feinberg, and/or his bonding agent, have been identified as “Receiver”  
15 and “Trustee”; (4) whether the allegations of Terrence Benish support and justify his  
16 claim for fees; (5) whether the claims for fees for Michael Feinberg and Thomas Lerner  
17 were supported by their claims of knowledge and experience; (6) whether Shulkin should  
18 have been treated as a late filed creditor of the Debtor’s estate; (7) whether the US  
19 Trustee fulfilled its obligations under the Bankruptcy Code; (8) whether the plan properly  
20 designated and placed all like creditors in the same class; (9) whether the plan and the  
21 pleadings in support of confirmation met the requirements of the Bankruptcy Code; and  
22 (10) whether the orders of the bankruptcy court that allowed and approved claims and  
23 payments violated the Bankruptcy Code.

24 Except with respect to the first and sixth issues, Shulkin has not asserted his own  
25 rights, but, rather, relies on rights or interests of the underlying Debtor or alleges  
26 generalized grievances. Accordingly, Shulkin does not have prudential standing to  
27 address issues two through five and seven through ten.

1 With respect to the first and sixth issues, they appear to address the same  
2 bankruptcy order. On November 14, 2011, Shulkin filed a motion to seek allowance of  
3 his alleged administrative claim in the amount of \$16,974.30. Dkt. # 9-4 at 56-84 (Ex 17,  
4 App. 165-93). However, the last day to file a motion for allowance of administrative  
5 expense claim was October 13, 2011. Dkt. # 9-3 at 26 (Ex. 10, App. 76). Accordingly,  
6 on December 28, 2011, the bankruptcy court entered an order disallowing Shulkin's  
7 administrative expense claim as untimely. Dkt. # 9-4 at 96 (Ex. 20, App. 205). Rather  
8 than disallow the claim completely, however, the bankruptcy court allowed the claim as a  
9 late-filed unsecured claim. *Id.* Thus, it appears that Mr. Shulkin is appealing this  
10 December 28, 2011 order that affects his pecuniary interest. This bankruptcy order that  
11 denied Shulkin's fee application constituted a final decision under 28 U.S.C. § 158(a). *In*  
12 *re Lakeshore Village Resort, Ltd.*, 81 F.3d 103, 105 (9th Cir. 1996); 28 U.S.C. § 158(a)  
13 (district courts have jurisdiction to hear appeals from final judgment, orders, and decrees  
14 of the bankruptcy court). However, Shulkin did not appeal or object to that order, despite  
15 having notice of it, until December 30, 2013, two years later, when he filed this appeal.  
16 *See In re Commc'n W. Fin. Corp.*, 761 F.2d at 1335. Accordingly, Shulkin cannot satisfy  
17 the "person aggrieved" standard, and therefore lacks prudential appellate standing.

18 For all the foregoing reasons, the court DISMISSES the appeal because Shulkin  
19 lacks prudential standing.

20 Dated this 1st day of July, 2014.

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23 The Honorable Richard A. Jones  
24 United States District Judge  
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