UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re ROBERT M. KADJEVICH, Debtor.	Case No. 587-05259-MM Chapter 7 **MEMORANDUM DECISION RE: MOTION FOR EXTENSION OF TIME TO FILE APPEAL**

INTRODUCTION

Before the Court is Nicholas Kadjevich's Motion for Extension of Time to File Appeal. For the reasons that are set forth as follows, the motion is denied.

FACTS

This adversary proceeding was brought by Suzanne Decker, the trustee, against Nicholas Kadjevich and William Henderson, the special probate administrator of the estate of Angela Kadjevich, for turnover of assets in the probate estate to the bankruptcy estate. Henderson entered into a stipulated judgment with the trustee to turn over all assets in the probate estate.

The bankruptcy court signed an order on November 29, 1993 approving the stipulated judgment. Counsel for Nicholas Kadjevich learned of the court's order on December 15, 1993 when he attended a status conference in the adversary proceeding. Counsel for Nicholas Kadjevich was also aware that the probate court had authorized the special administrator to enter into such a stipulation. The order was entered on the court's docket on December 16, 1993. There is no notice of entry of the order in the court's file. Nicholas filed both a notice of appeal and this motion for extension of time to file appeal on

December 29, 1993.

DISCUSSION

Bankruptcy Rule 8002(a) provides that a notice of appeal must be filed within 10 days from the date of the entry of a judgment or order, which was December 16, 1993. The original 10-day period to file a notice of appeal expired on December 26, 1993. Nicholas Kadjevich filed the notice of appeal on December 29, 1993.

Bankruptcy Rule 8002(c) provides that the court may extend the time for filing the notice of appeal for a period not to exceed 20 days if application for extension is made within the original 10-day period for filing a notice of appeal. However, a request for the extension of the period to file a notice of appeal made after the original 10-day period but no more than 20 days after the expiration of that time may be granted upon a showing of excusable neglect. Because Nicholas' request for an extension of time to file a notice of appeal was not made timely prior to December 26, 1993, he must establish that his omission was due to excusable neglect.

The United States Supreme Court has held that the excusable neglect standard is a flexible one to be equitably applied to permit late actions caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control. Pioneer Investment Services v. Brunswick Assoc. Ltd. Partnership, ___ U.S. ___, 113 S.St. 1489 (1993). To determine whether neglect is excusable, the court must consider all of the relevant circumstances surrounding the party's omission, including prejudice to the debtor, the length of the delay, whether the delay was within the reasonable control of the party, and whether the party acted in good faith. Id. Although the excusable neglect standard is generally liberally construed, where the purpose of the extension is to review the propriety of a decision on the merits, such as in the context of a late filed notice of appeal, the term must be strictly interpreted. In re Dix, 95 BR 134, 138 (BAP 9th Cir. 1988).

Bankruptcy Rule 9022 provides that the clerk shall serve notice of the entry of an order on all contesting parties. There is no indication in the court's file that notice of the proposed judgment was given. However, Bankruptcy Rule 9022 also provides that lack of notice of the entry of an order does not affect the time to appeal or authorize the court to relieve a party for failure to appeal timely. A party has an independent duty to keep informed. Alaska Limestone Corp. v. Hodel, 799 F.2d 1409, 1412 (9th

Cir. 1986). The failure of the clerk to notify the parties that a judgment has been entered does not provide grounds for excusable neglect or warrant the extension of time to file an appeal. Id. That neither the clerk nor the parties provided notice of the entry of the order does not justify a finding of excusable neglect.

Of particular significance is the fact that Nicholas Kadjevich had actual notice that the order had been signed in sufficient time to file a notice of appeal during the original 10-day period. In In re Bloomingdale, 137 BR 351 (Bankr. C.D. Cal. 1991), the bankruptcy court declined to find excusable neglect warranting the extension of time for the plaintiff to serve the defendant with an adversary complaint because the plaintiff had actual knowledge of the bar date for filing such actions. Thus, service of the complaint was within the control of the plaintiff. The failure to act with either actual or implied knowledge of a requirement does not constitute excusable neglect. Id. at 356. Counsel's knowledge may be imputed to his client. Id. at 356 fn. 10.

On balance, the relevant factors in this case do not warrant excusing the defendant's delay in filing a timely notice of appeal. Nicholas Kadjevich failed to act diligently as soon as he learned of the filing of the judgment on December 15, 1993. Had he acted promptly, he could have filed a notice of appeal timely. The delay was reasonably within his control.

Although seemingly harsh, rigid enforcement of the appeal period is justified by the peculiar demands of a bankruptcy proceeding, primarily the need for expedient administration of the bankruptcy estate and finality of orders issued by the court in the course of administration. In re Mouradick, ___ F.3d ___, 1994 WL 1489 (9th Cir. 1/5/94). The purpose of Bankruptcy Rule 8002 is to insure speedy appeals and to, thereby, maintain progress in bankruptcy proceedings. In re Mullis, 79 BR 26, 28 (D. Nev. 1987). Parties to bankruptcy proceedings must be aware of developments affecting their rights. Id. Specifically, they must monitor the dockets to inform themselves of the entry of orders that they may wish to appeal. Id.

CONCLUSION

For the reasons stated in the record, Nicholas Kadjevich's motion for extension of time to file a notice of appeal is denied.

Thus, where the court grants an extension of time, this rule effectively gives an appellant 30 days from the date of entry of the order to file a notice of appeal. In re Martinez, 97 BR 578 (BAP 9th Cir. 1989), aff'd, 919 F.2d 145 (9th Cir. 1990).