

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION  
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In re: Case No. 9:08-bk-16204-FMD  
Chapter 7

Lawrence N. Petricca, Sr.,

Debtor.

**ORDER DENYING  
MOTION FOR REFUND OF FILING FEE**

THIS CASE came on for consideration, without a hearing, on *Frederick Hutchings' Motion for the Return of His Filing Fee* (Doc. No. 570) (the "Motion for Refund"). Having considered the motion, the record, and applicable law this Court finds as follows:

On June 15, 2016, Frederick Hutchings ("Hutchings") timely filed a notice of appeal of the *Order Overruling Frederick Hutchings' Objection to Trustee's Interim Report* (the "Notice of Appeal").<sup>1</sup> The Court entered an order directing immediate payment of the filing fee, which Hutchings paid.<sup>2</sup>

The Notice of Appeal was transmitted to the District Court.<sup>3</sup> However, the text of the Notice of Appeal stated that "the undersigned hereby appeals to the United States Court of Appeals for the Eleventh Circuit." Thereafter, Hutchings filed a letter advising the Court that he wished to appeal directly to the Eleventh Circuit Court of Appeals, not to the District Court (the "Hutchings Letter").<sup>4</sup> Upon review of the Hutchings' Letter, this Court began to prepare an order that considered the Hutchings Letter as a motion for direct certification under Federal Rule of Bankruptcy Procedure 8006(f) and 28 U.S.C. § 158(d)(2).

28 U.S.C. § 158(a) grants the district courts of the United States the jurisdiction to hear appeals from final orders of the bankruptcy court. Section 158(d)(2) provides for further review in the courts of

appeals and for jurisdiction of appeals from the bankruptcy court if the bankruptcy court, the district court, or all parties acting jointly, certify that:

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken....

Federal Rule of Bankruptcy Procedure 8006(f) describes how a party may make a request for direct certification that satisfies the requirements of 28 U.S.C. § 158(d)(2) for direct certification of an appeal.

Because the Hutchings Letter did not satisfy the requirements enumerated in Rule 8006(f), the Court intended to deny the motion. This would have resulted in the appeal proceeding in the District Court. But, on July 20, 2016, before the Court entered its intended order, the District Court entered an order dismissing the appeal on Hutchings' *Motion to Dismiss His Bankruptcy Appeal*.<sup>5</sup> Because the appeal was dismissed, there was no further action for the Court to take.

The Motion for Refund states that Hutchings wishes to pursue his appeal before the Eleventh Circuit Court of Appeals, but that the Eleventh Circuit has not entered an appeal for him. This is because Hutchings' Notice of Appeal has not been transmitted to the Eleventh Circuit and would not be transmitted there until this Court or the District

<sup>1</sup> Doc. No. 538.

<sup>2</sup> Doc. No. 539.

<sup>3</sup> Doc. No. 548.

<sup>4</sup> Doc. No. 554.

<sup>5</sup> Doc. No. 563. (In light of Hutchings having filed other papers with the Court that indicated he may have been served with a motion for sanctions under Federal Rule of Bankruptcy Procedure 9011(c) that was directed at the appeal, the Court believed that Hutchings no longer wished to pursue the appeal. See *Frederick Hutchings' Opposition to Trustee Jensen's Motion for Sanctions* (Doc. No. 557) and *Order Striking Objections to Sanctions Motions Without Prejudice* (Doc. No. 561)).

Court grants a motion for direct certification. The Motion for Refund also states that Hutchings did not receive a response from the Bankruptcy Court with respect to his letter and his request to file a direct appeal to the Eleventh Circuit. As stated above, this Court was in the process of preparing an order denying such a request, until it received notice from the District Court that Hutchings voluntarily dismissed the appeal. Hutchings is free to seek relief in the District Court from the order dismissing the appeal<sup>6</sup> and to request that the District Court certify the appeal to the Eleventh Circuit Court of Appeals.

The Court notes that Hutchings' appeal is from the Court's *Order Overruling Frederick Hutchings' Objection to Trustee's Interim Report*.<sup>7</sup> District courts have jurisdiction to hear appeals "from *final judgments, orders, and decrees*" of bankruptcy judges.<sup>8</sup> A final decision is generally one which "ends the litigation on the merits and leaves nothing for the court to do but execute judgment."<sup>9</sup>

Here, Hutchings' appeal related to an appeal of an interim report, not a final judgment. Recently, the Court (after a hearing at which the Court explained the basis of its ruling to Hutchings) entered an order overruling objections to the Trustee's Final Report.<sup>10</sup> In any event, the Court considers any appeal related to the Trustee's Reports, whether interim or final, to be frivolous. As the Court explained to Hutchings at hearings on May 26, 2016, and July 28, 2016, and in the Court's *Order Denying Motions for Recusal*,<sup>11</sup> the issues that Hutchings has raised in his objections relate solely to the conduct of an auction and sale of estate assets by the Trustee.<sup>12</sup> The District Court has affirmed this Court's rulings with respect to the auction and sale,<sup>13</sup> and the Eleventh Circuit Court of Appeals dismissed Hutchings' appeal from the District Court's ruling.<sup>14</sup>

Finally, on the merits of the Motion for Refund itself, there is no authority for the Court to refund a

filing fee upon the voluntary dismissal of an appeal. The Court's long-standing policy on refunding filing fees prohibits the refund of filing fees due upon filing, even if a party filed the case in error or the court dismissed the case or proceeding.

Accordingly, it is

**ORDERED** that the Motion for Refund is **DENIED**.

**DATED:** August 15, 2016.

/s/ Caryl E. Delano

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Caryl E. Delano  
United States Bankruptcy Judge

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<sup>6</sup> Doc. No. 563.

<sup>7</sup> Doc. No. 533.

<sup>8</sup> 28 U.S.C. § 158(a) (emphasis added).

<sup>9</sup> *Commodore Holdings, Inc. v. Exxon Mobil Corp.*, 331 F.3d 1257, 1258 (11th Cir. 2003).

<sup>10</sup> Doc. No. 567.

<sup>11</sup> Doc. No. 558.

<sup>12</sup> See Doc. Nos. 525, 550.

<sup>13</sup> Doc. No. 535.

<sup>14</sup> District Court Case No. 2:14-cv-615-SPC, Doc. No. 32.