

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Michael J. Mackany,

Debtor.

ORDER OVERRULING
OBJECTION TO CLAIM

BKY 4-85-915

At Minneapolis, Minnesota, .

This case came on for hearing on the objection of the debtor to claim no. 4 filed by the Minnesota Department of Revenue. Ian Traquair Ball appeared for the debtor and Thomas K. Overton appeared for the Department of Revenue.

While the factual background of this case is somewhat convoluted, the issue raised by the objection is simple. This case was filed on May 5, 1985. A notice of the filing of the case was sent to all creditors, including the Department of Revenue on May 24, 1985. Among other things, the notice notified creditors that the meeting of creditors would be held on June 19, 1985, and that 90 days thereafter was the last day for timely filing proofs of claim. Because of its confusion caused by the debtor's filing of a number of previous cases, the Department of Revenue did not file a formal proof of claim in this case until June 29, 1988. The debtor now requests that the Department of Revenue's claim be disallowed on the grounds that it was not timely filed.

The allowance of claims is governed by Section 502(b) of the Bankruptcy Code which provides that claims are deemed allowed if not objected to and that, if objected to, "the court . . . shall allow such claim . . . except to the extent that" Section Tardiness or late filing is not among the grounds for disallowing claims. Thus, while it is popularly thought that late filed claims should be disallowed, that simply is not true.(FN1) Lest there be

any

doubt on this point, Section 726 dealing with distributions in chapter 7 cases makes it abundantly clear that late filed claims should be allowed nonetheless. Among the priorities of distribution in Section 726(a) are allowed unsecured claims which are "timely filed" followed by those which are "tardily filed." Thus, not only are tardily filed claims entitled to be allowed in the absence of some other basis for disallowance, they are entitled to distribution if there is money left over after paying timely filed claims in full. While the issues of priority of distribution found in Section 726 are not applicable in chapter 13 cases, it demonstrates the principal under the Bankruptcy Code that all claims are allowed, whether timely filed or not. It is only their treatment which may or may not vary depending on timeliness.

Although the Bankruptcy Code is clear and unequivocal, the debtor's confusion is caused, in part, by the Bankruptcy Rules. Bankruptcy Rule 3002(a) provides:

(1) Part of the confusion by attorneys and as we will see

perhaps by the rule drafters, results from the fact that the law was different under the Bankruptcy Act. Section 57(n) of the Bankruptcy Act provided in part, "Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed." 11 U.S.C. Section 939(n) (repealed Oct. 1, 1979).

NECESSITY FOR FILING. A unsecured creditor or an equity security holder must file a proof of claim or interest in accordance with this rule for the claim or interest to be allowed

Rule 3002(2)(2) states in part:

TIME FOR FILING. In a chapter 7 liquidation or a chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors

The Rule is at best sloppily written and can lead to the impression that timely filing is a requirement of allowance. The rule does not quite say that, however, and to the extent that it did, it would be invalid as being inconsistent with the statute itself. The confusion is compounded by language in the official forms which contains language to the effect "claims which are not filed within ninety days following the above date set for the meeting of creditors will not be allowed, except as otherwise provided by law." Such language is almost incorrect, but may be saved by the "except as otherwise provided by law." The law does in fact otherwise provide that such claims will be allowed.(FN2)

The debtor's concern results from what will happen when he completes payments under the plan and the Department of Revenue has not been paid in full. The answer to that question must be found in a review of the provisions of the debtor's plan and in the provisions of chapter 13. The debtor's problem cannot be solved, however, by disallowing the Department of Revenue's claim.

(FN2) This is one of the many reasons that this district does not use the official form of notice.

THEREFORE, IT IS ORDERED: The debtor's objection to claim no. 4 filed by the Minnesota Department of Revenue is overruled.

ROBERT J. KRESSEL
CHIEF UNITED STATES BANKRUPTCY JUDGE

