UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

COMMUNITY BANK, N.A.,

Appellant,

DECISION AND ORDER

-v-

08-CV-6082 CJS

STEPHEN RIFFLE and LAURA RIFFLE,

Respondents.

For Appellant: Edward Y. Crossmore, Esq.
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For Respondents: Carl J. Schwartz, Jr., Esq.
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INTRODUCTION

Now before the Court is an appeal of Community Bank, N.A. ("Appellant") of a Decision and Order of the Honorable John C. Ninfo II, U.S. Bankruptcy Judge, entered on January 24, 2008, denying Appellant's motion to dismiss Respondents' Chapter 13 Petition. The Decision and Order is affirmed.

BACKGROUND

The facts of this case were set forth in Judge Ninfo's Decision and Order, and need

not be repeated in their entirety here. It is sufficient to note that, when respondent Stephen Riffle ("Riffle") filed the subject Chapter 13 petition on September 21, 2007, he filed a "payment advice" from his employer dated September 14, 2007. Riffle did not file other prior payment advices that he had received from his employer within sixty days of filing the petition, because he had thrown them away. Nevertheless, the September 14, 2007 payment advice set forth his year-to-date earnings and his year-to-date payroll deductions. Appellant moved to dismiss the petition, pursuant to 11 U.S.C. § 521(a)(1)(B)(iv), which provides, in relevant part, that "unless the court orders otherwise," the debtor shall file "copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor." More specifically, Appellant argued that the petition should be deemed to have been automatically dismissed, pursuant to 11 U.S.C. § 521(i)(1), which states that,

> [s]ubject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.

(Bankruptcy Court Decision and Order at 2-3). Judge Ninfo denied the motion, finding, *inter alia*, that, by filing the September 14, 2007 payment advice, Riffle had complied with 11 U.S.C. § 521(a)(1)(B)(iv), by filing "'other evidence of payment' for the sixty days before the filing of his petition, which provided all of the information required under [§] 521(a)(1)(B)(iv)." (*Id.* at 6).

STANDARD OF REVIEW

Pursuant to 28 U.S.C. §158, "the district courts of the United States . . . have jurisdiction to hear appeals" "from final judgments, orders, and decrees" of a bankruptcy judge. 28 U.S.C. §158(a)(1). Additionally, as outlined under Rule 8013 of the Federal Rules

of Bankruptcy Procedure, "[o]n an appeal the district court may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings," and findings of fact "shall not be set aside unless clearly erroneous." Fed.R.Bankr.P.8013. Moreover,

> [u]nder this standard, the district court is not authorized to engage in independent fact finding and reviews the bankruptcy court's findings only for clear error. The findings of fact can only be set aside by the district court when, after reviewing the evidence, the court is left with the firm and definite conviction that a mistake has been committed.

Bagel Bros. Maple, Inc. v. Ohio Farmers, Inc., 279 B.R. 55, 61 (Bankr. W.D.N.Y. 2002) (citations and internal quotation marks omitted). However, when a district court is reviewing conclusions of law, a *de novo* standard is applied. *Id.; See also, In re Enron North America Corp.*, 312 B.R. 27, 28 (Bankr. S.D.N.Y. 2004).

DISCUSSION

To the extent that Judge Ninfo made factual findings in his Decision and Order, the Court has reviewed them and finds that they were not clearly erroneous. Additionally, the Court has conducted a *de novo* review of Judge Ninfo's conclusions of law and affirms and adopts them in all respects.

CONCLUSION

Accordingly, the Court affirms Judge Ninfo's January 24, 2008 Decision and Order upon "the opinion of the court below." *Victor Talking Mach. Co. v. Hoschke*, 188 F. 326, 328 (2d Cir. 1911).

So Ordered.

Dated Rochester, New York
August 7, 2008

ENTER:

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