

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

THE CONLON CORPORATION

Case No. 84-20421 K

Debtor

ORDER DENYING MOTION FOR REHEARING

John W. Conlon, Jr.'s March 6, 1992 "Motion for Rehearing" regarding this Court's Order allowing fees for the Trustee's attorneys (Order entered February 26, 1992) is denied. At hearing on said fees on January 31, 1992 the Court invited Mr. Conlon to submit, no later than February 7, 1992, any further materials he wished to offer in opposition to the fees. He has not availed himself of this opportunity. Even his "Motion for Rehearing" (which appears in actuality to be an ex-parte application) offers nothing more than that he "wishes to clarify several issues about which it appears the court may have misconceptions despite the evidence and documentation presented."

Conlon cites Bankruptcy Rule 8015 as the authority for his Motion. That Rule has no application in the Bankruptcy Court itself; it applies only to seek rehearing of a decision rendered by a Bankruptcy Appellate Panel or U.S. District Court upon the disposition of a review of a decision of a Bankruptcy Court. Thus

his request for an extension of time to appeal is denied, to the extent that it may be based upon Bankruptcy Rule 8015.

Treating his motion as if it were a motion for a new trial under Bankruptcy Rule 9023 or a motion to vacate under Rule 9024, he has not set forth grounds for such relief.

Treating his request for an extension of time to appeal under Bankruptcy Rule 8002(c), such request is denied. Mr. Conlon has had four opportunities to provide evidence and documentation on this matter: (1) his initial papers opposing the fees; (2) the hearing on January 31, 1992; (3) the one-week period the Court sua sponte offered Mr. Conlon so that he could provide further materials; and (4) his Motion for Rehearing, which offered no grounds for rehearing and no grounds for extension of the time to appeal.

Under Bankruptcy Rule 8002(b), the filing of a "timely motion" for a new trial under Rule 9023 automatically recommences the time to appeal. However, Rule 9023 merely incorporates F.R.Civ.P. Rule 59, and Rule 59 requires that a motion for a new trial "shall be served" not later than 10 days after the entry of the judgment. I have no evidence that Mr. Conlon's current motion was served on anyone. (No affidavit of service has been filed.) Thus, the motion might not have been timely served under F.R.Civ.P. Rule 59, and might not be a "timely motion" under Bankruptcy Rule 8002(b), even though said motion was timely "filed." That issue is, however, for the reviewing court to decide if he should now

decide to file a Notice of Appeal.

The motion is denied in all respects.

Dated: Buffalo, New York
March 18, 1992


/s/ MICHAEL J. KAPLAN

U.S.B.J.