

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE:	)	CASE NO. 01-65226
	)	
WILLIAM PAUL WOESSNER	)	CHAPTER 13
and	)	
CHERYL LYNN WOESSNER,	)	
	)	
Debtors.	)	JUDGE RUSS KENDIG
	)	
	)	<b>MEMORANDUM OF DECISION</b>
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This matter is before the court on an objection to claim filed by William Paul and Cheryl Lynn Woessner (hereafter “Debtors”) and a response filed by C.L. Thompson and Lori Rush (hereafter “Creditors”). Debtors’ objection to claim is **SUSTAINED** because the claim was filed late.

**FACTS**

On December 5, 2001, Debtors filed a chapter 13 bankruptcy. In schedule F, they listed a \$75.00 debt owed to C.L. Thompson and Lori Rush for utility service in 2001.

On December 10, 2001, the clerk’s office issued Official Bankruptcy Form B9I to Debtors’ creditors, which contained notice of the April 8, 2002 proof of claim filing deadline and informed creditors “papers must be *received* by the bankruptcy clerk’s office by the . . . deadlines” (emphasis added). Creditors’ proof of claim was received by the clerk’s office on April 9, 2002, one day after the bar date.

On April 15, 2002, Debtors filed an objection to Creditors’ claim objecting to the untimeliness of the filing and lack of attached supporting documentation. On May 2, 2002, Creditors filed a response attaching a copy of a lease but failing to address the untimeliness of the filing of the claim.

**DISCUSSION**

In a chapter 13 bankruptcy, 11 U.S.C. § 502(b), read in conjunction with Fed. R. Bankr P. 3002(c), provides the statutory framework governing the disallowance of untimely filed claims. Section 502(b) instructs the court to allow a claim unless a party in interest objects and,

under subsection (9), “proof of such claim is not timely filed, except to the extent tardily filed as permitted under . . . the Federal Rules of Bankruptcy Procedure . . . .” 11 U.S.C. § 502. Rule 3002(c) sets forth the time period for filing a claim stating “[i]n a chapter . . . 13 individual’s debt adjustment case, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors . . . .” Fed. R. Bankr. P. 3002. No allowance is made for untimely filed claims other than those filed by the government, an infant, an incompetent person, or other persons specifically enumerated but inapplicable to the current case. See Fed. R. Bankr. P. 3002.

Strict interpretation of the rules governing proof of claim filing deadlines is called for under the bankruptcy code. See Gardenhire v. IRS (In re Gardenhire), 209 F.3d 1145, 1152 (9<sup>th</sup> Cir. 2000) (equitable tolling of claims bar date in chapter 13 case inconsistent with plain meaning of Bankruptcy Code and Rules); In re Aboody, 223 B.R. 36, 40 (B.A.P. 1<sup>st</sup> Cir. 1998) (untimely filed claim disallowed in chapter 13 case); In re Brogden, 274 B.R. 287, 294 (Bankr. M.D. Tenn. 2001) (proof of claim disallowed in chapter 13 case even where creditor did not receive notice of bar date); In re Wallace, 2001 WL 1857107, at \*2 (Bankr. N.D. Ohio 2001) (proof of claim filed four days after bar date is disallowed; no identification as to chapter); In re Nyeste, 273 B.R. 148, 149 (Bankr. S.D. Ohio 2001) (untimely filed claim disallowed in chapter 13 case).

While a rose is a rose, a deadline is a deadline. As the United States Supreme Court has said:

If 1-day late filings are acceptable, 10-day late filings might be equally acceptable, and so on in a cascade of exceptions that would engulf the rule erected by the filing deadline; yet regardless of where the cutoff line is set, some individuals will always fall just on the other side of it.

United States v. Locke, 471 U.S. 84, 101 (1985), quoted in In re Leet, 274 B.R. 695, 698 (B.A.P. 6<sup>th</sup> Cir. 2002) (citation omitted).

Two important policy considerations mandate the disallowance of untimely filed claims in chapter 13 cases. In re Chavis, 47 F.3d 818, 824 (6<sup>th</sup> Cir. 1995) (in applying pre-1994 statute, court disallowed untimely filed claim in chapter 13 case). First, a chapter 13 debtor retains assets by making periodic payments to creditors for their value. Id. The payments to creditors must equal or exceed the amount creditors would receive under chapter 7. Id. If untimely filed claims are not barred, it is impossible to determine, with any finality, whether a chapter 13 plan satisfies this chapter 7 value standard. Id. Second, chapter 13 provides for the repayment of allowed claims. Id. Claims must be timely filed so the efficacy of the plan may be determined in light of the debtor’s assets, debts and foreseeable earnings. Id.

In the instant case, Creditors’ proof of claim was untimely filed and must be disallowed.

Creditors received notice of the April 8, 2002 claims bar date on Official Bankruptcy Form B9I. This form notified Creditors their claim had to be *received* by the bar date at the clerk's office in order to be considered timely filed. The claim was *received* April 9, 2002, one day late. In chapter 13 cases, proofs of claim enable the trustee to pay creditors according to plan provisions. The total dollar amount on all claims determines the percentage each claimant will receive. This percentage determines whether a plan will succeed or fail, according to its original provisions. Therefore, the trustee must be able to look toward, with finality, the deadline for filing proofs of claim. A late filed claim, even by a day, defeats this purpose.

Based on the foregoing, Debtors' objection to claim is **SUSTAINED** and Creditors' claim is **DISALLOWED**.

An appropriate order shall enter.

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**Russ Kendig**  
**United States Bankruptcy Judge**

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NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

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WILLIAM PAUL WOESSNER and	)	CHAPTER 13
CHERYL LYNN WOESSNER,	)	
	)	
Debtors.	)	JUDGE RUSS KENDIG
	)	
	)	<b>ORDER</b>
	)	
	)	
	)	
	)	

This matter came before the court on an objection to claim filed by William Paul and Cheryl Lynn Woessner and a response filed by C.L. Thompson and Lori Rush. The matter was taken under advisement.

**IT IS HEREBY ORDERED** Debtors' objection to claim is **SUSTAINED** and Creditors' claim is **DISALLOWED**.

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**Russ Kendig**  
**United States Bankruptcy Judge**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this \_\_\_\_\_ day of May 2002, the above Memorandum of Decision and Order were sent via regular U.S. Mail to:

**Douglas L. Thrush**  
13 Park Avenue West  
Suite 314  
Mansfield, Ohio 44902

**C.L. Thompson and Lori Rush**  
411 Grandridge Avenue  
Mansfield, Ohio 44907

**Toby L. Rosen**  
Chapter 13 Trustee  
Charter One Building  
4<sup>th</sup> Floor  
400 Tuscarawas Street, West  
Canton, Ohio 44702

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Deputy Clerk