**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY APPELLATE PANEL**

**OF THE NINTH CIRCUIT**

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| In re: | BAP No. CC-06-1433-PaMkT |
| WILLIAM EISEN, | Bk. No. SA 06-10372-ES |
| Debtor. | |
| WILLIAM EISEN; THE ALLEN GROUP PARTNERS; JAMES A. LAW, | |
| Appellants, | |
| v. | **M E M O R A N D U M**[1] |
| JEFFREY I. GOLDEN, Chapter 7 Trustee, | |
| Appellee. | |

Argued and Submitted on September 21, 2007
at Pasadena, California

Filed - October 26, 2007

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Erithe A. Smith, Bankruptcy Judge, Presiding.

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Before: PAPPAS, MARKELL and TCHAIKOVSKY,[2] Bankruptcy Judges

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[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

[2] Hon. Leslie J. Tchaikovsky, United States Bankruptcy Judge for the Northern District of California, sitting by designation.

This is an appeal of an order denying the motion of appellants Allen Group Partners ("Allen"), chapter 7[3] debtor William Eisen ("Eisen"), and James A. Law ("Law") for a rehearing concerning the bankruptcy court's orders disallowing the claims of Law and approving a compromise (the "Compromise") between Jeffrey I. Golden (the "Trustee") and DFL Partnership ("DFL"). We AFFIRM the decision of the bankruptcy court.

**FACTS**[4]

On May 24, 2006, the bankruptcy court heard the Trustee's motions to disallow Law's creditor claims and for approval of the Compromise.[5] David Burkenroad, attorney for Law and Allen, did not attend the hearing, but instead dispatched a substitute attorney, Kemmerer, to the hearing. Kemmerer declined the court's invitation to argue the motions, and instead submitted them for

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[3] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated prior to the effective date (October 17, 2005) of the relevant provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, April 20, 2005, 119 Stat. 23.

[4] In separate appeals, we have addressed Appellants' challenge to the bankruptcy court's order disallowing the Law claims (in CC-06-1387), and to the order approving the Compromise between the Trustee and DFL (in CC-06-1385). Since this appeal deals strictly with the procedural and legal issues relating to a reconsideration of those orders, please see our memoranda in those appeals for a recitation of the facts in the underlying cases.

[5] In their statement of issues on appeal, appellants sought review of the bankruptcy court's denial of a rehearing on four motions heard by the court on May 24, 2006. In their Opening Brief, however, appellants restricted their arguments to the Law and Compromise matters. Any issues raised by appellants concerning any other orders are therefore deemed waived.

decision based upon the court's tentative rulings, which were to disallow the claims and approve the Compromise. The bankruptcy court thereafter entered orders disallowing the Law claims and approving the Compromise on July 11, 2006.

On July 21, 2006, appellants filed a motion seeking a rehearing of the matters heard on May 24, 2006. Appellants' entire argument to the bankruptcy court was presented in one paragraph of the motion:

> This motion is based on the inability of counsel for The Allen Group and James A. Law to attend the May 24 hearing and present appropriate argument. The appearance attorney who did appear did not have sufficient opportunity to review the motions and did not follow instructions when he "submitted on the tentative."

The bankruptcy court held a hearing on appellants' motion for rehearing on October 5, 2006. The court invited Burkenroad and Eisen to defend their positions:

> THE COURT: My tentative ruling is to deny the motion based upon insufficient grounds stated for reconsideration or relief from the order. . . .
>
> BURKENROAD: Well, your Honor, we weren't able to attend. We hired a courtesy law firm. And contrary - I mean without authority, he submitted on the tentative. It's basically something that he did for which he had no authority. He was supposed to argue, not just submit on the tentative. And that's why we filed this motion, because the attorney acted without authority.
>
> And like I said, it happens. When you cannot attend a hearing, you hire a firm to appear for you, but they're not under instruction to submit on whatever the tentative is. They're supposed to argue.
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> THE COURT: That's not a reason - that is absolutely not a reason for vacating that order. There was a long hearing that day, and the court

> issued a tentative ruling, and an attorney who was appearing on behalf of a client, which he was authorized to appear, certainly has to be free to make a judgment call as to whether he is or is not persuaded by the tentative ruling and whether he believes it[']s appropriate to argue against the tentative and whether he believes he has arguments against the tentative.
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> So if that's the – and that appears in the motion to be the basis for reconsideration, then the motion would be denied. . . . So that being the case, the motion for rehearing is denied.

Tr. Hr'g 2:22–3:19, 6:3-4 (October 5, 2006).

The bankruptcy court entered its order denying the motion for rehearing on November 14, 2006 "for the reasons stated on the record." Appellants filed a timely notice of appeal of that order on November 22, 2006.

**JURISDICTION**

The bankruptcy court had jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b)(2). We have jurisdiction pursuant to 28 U.S.C. § 158.

**ISSUE**

Whether the bankruptcy court abused its discretion in denying appellants' motion for rehearing.

**STANDARD OF REVIEW**

We review a bankruptcy court's denial of a motion for reconsideration for abuse of discretion. In re Basham, 208 B.R. 926, 930 (9th Cir. BAP 1997).

**DISCUSSION**

As a preliminary matter, we note that the motion filed by appellants in the bankruptcy court was styled as a "motion for rehearing" of the matters originally heard on May 24, 2006. We are unaware of any provision in the Civil or Bankruptcy Rules affording a party the right to a "rehearing" in the bankruptcy court without some intervening event or decision of the court.[6]

Instead, the bankruptcy court interpreted appellants' motion as one seeking reconsideration of the orders entered on July 11, 2006. Tr. Hr'g 2:22-24 ("My tentative ruling is to deny the motion upon insufficient grounds stated for reconsideration or relief from the order."); Tr. Hr'g 3:8-9 ("that is simply not a reason for vacating that order"); Tr. Hr'g 4:18-22 ("If you're going to seek reconsideration, you've got to be pretty clear on the basis upon which you're seeking reconsideration and the evidence that the court is going to consider."); Tr. Hr'g 5:9-11 ("what I'm saying is, your motion for reconsideration needs to be specific as to what it's based on"). Eisen and Burkenroad were both present and argued their motion, and neither objected to the bankruptcy court's characterization of their motion as one for "reconsideration or relief from the [July 11] order." They also did not object to this characterization at oral argument before the Panel.

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[6] Rule 8015, "Motion for Rehearing," deals only with appeals in the Bankruptcy Appellate Panel or District Court. After the BAP or District Court has decided an appeal, a party may move for rehearing if it believes that the appellate tribunal overlooked or misapprehended some point of law or fact. United States v. Fowler (In re Fowler), 394 F.3d 1208, 1215 (9th Cir. 2005).

By styling its tentative ruling as denying "reconsideration or relief from the order," the bankruptcy court acted consistently with the decision of our Court of Appeals that reconsideration of an order in a bankruptcy case may be sought under either Rules 9023 or 9024, which incorporate Fed. R. Civ. P. 59(e) and 60(b) respectively. In re Fuller, 950 F.2d 1437, 1442 (9th Cir. 1991). When, as here, the motion is filed within 10 days of entry of the final order, we are directed to treat it as a Rule 59(e) motion to alter or amend judgment. Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp., 248 F.3d 892, 899 (9th Cir. 2001).[7]

Under Fed. R. Civ. P. 59(e), a bankruptcy court may alter or amend (i.e., reconsider) a judgment (or order). Such motions should not be granted unless the trial court "is presented with newly discovered evidence, committed clear error, or if there is an intervening change in controlling law." Kona Enter., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000). These motions are also available to prevent manifest injustice. Navajo

[7] As we have noted several times in the various appeals originating in Eisen's bankruptcy case, we have been handicapped by the limited, and in this appeal nonexistent, arguments in appellants' opening brief. It is possible that appellants are attempting to argue that their motion for "rehearing" is a motion under Fed. R. Civ. P. 59(a) for a new trial (or, in this case, evidentiary hearing in a contested matter). If so, their appeal is moot. Appeals of the denial of motions under Fed. R. Civ. P. 59(a) are interlocutory. Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, FED. PRACTICE & PROCEDURE CIVIL 2D § 2818 (West Publishing Co., 2d ed. 1995); 12 MOORE'S FED. PRACTICE § 59.51[1] (Matthew Bender 2007). Although this Panel has discretion to consider interlocutory appeals, the two matters in this appeal, the Law claims and the Compromise, were the subjects of a final order (the July 11 Order). Interlocutory orders merge into final judgments. Lower Elwha Band of S'Kallams v. Lummi Indian Tribe, 235 F.3d 443, 449 (9th Cir. 2000). We have already reviewed and affirmed the final orders of the bankruptcy court concerning these matters, and, therefore, if this appeal did arise under Fed. R. Civ. P. 59(a), it is moot.

Indian Nation v. Confederated Tribes & Bands of the Yakima Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003).

In both their motion and during the hearing before the bankruptcy court, appellants argued that the substitute attorney, Kemmerer, lacked authority to submit the motions based solely on the court's tentative ruling. There were no other grounds for relief stated. The bankruptcy court correctly determined that this was not an adequate ground to support the grant of the motion.[8]

Appellants provided no argument whatsoever in their opening brief in support of their motion. Appellants have provided no legally sufficient basis to support reconsideration of the bankruptcy court's prior orders. Appellants point to no newly discovered evidence, clear error, or intervening change in any controlling law. Nor was there any evidence of a manifest injustice offered to the bankruptcy court or to this Panel. Appellants' argument, that they are entitled to relief from the 2002 Order because the substitute attorney retained by them to

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[8] Indeed, to the extent that appellants argue that they should be granted a new hearing because Kemmerer made a mistake or acted without authorization in submitting on the tentative ruling, or that Burkenroad made a mistake in failing to properly instruct substitute counsel, appellants' arguments run afoul of the long-standing, fundamental principle that a party is accountable for its attorney's actions in the courtroom. The Supreme Court has reinforced this notion on numerous occasions. See, e.g., Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 397 (1993) (parties "must be held accountable for the acts and omissions of their attorneys"); Link v. Wabash R. Co., 370 U.S. 626, 633-34 (1962) ("Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent. . . .").

appear at the hearing was ill-prepared or failed to follow their instructions, is unsupported by case authority. Consequently, the bankruptcy court did not abuse its discretion in denying the motion for rehearing.

## CONCLUSION

We AFFIRM the decision of the bankruptcy court.