

MAR 30 2015

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

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In re:)
DEBRA LEIGH JACOBS,)
Debtor.)
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DEBRA LEIGH JACOBS,)
Appellant/)
Cross-Appellee,)
v.)
BRAIN POWER AMERICA INC.;)
JOHN W. MUIJE,)
Appellees/)
Cross-Appellants.)
_____)

BAP Nos. NV-15-1048
NV-15-1064
(Cross-Appeals)
Bk. No. 2:04-bk-19619-GS

**ORDER OVERRULING
UNTIMELY ELECTION**

Before: KIRSCHER, PAPPAS and DUNN, Bankruptcy Judges.

The Panel has received and considered the election filed by Brain Power America, Inc., and John W. Muije to have BAP appeal NV-15-1048 heard by the United States district court. Pursuant to Fed. R. Bankr. P. 8005, the Panel has examined the election for timeliness.

The deadline for a party to an appeal to file an election to the U.S. district court is governed by 28 U.S.C. § 158(c).

[E]ach appeal . . . shall be heard by a 3-judge panel of the bankruptcy appellate panel service . . . unless--(A) the appellant elects at the time of filing the appeal; or (B) any other party elects, not later than 30 days after service of notice of the appeal; to have such appeal heard by the district court.

28 U.S.C. § 158(c) (1).

1 The debtor filed her notice of appeal on February 10, 2015,
2 and the appeal was referred to the BAP (appeal no. NV-15-1048).
3 On February 24, 2015, Brain Power America, Inc., and John W. Muije
4 filed their "notice of cross-appeal," which was referred to the
5 BAP (appeal no. NV-15-1064). A cross-appeal briefing order was
6 issued in both appeals on February 25, 2015, superseding the
7 initial briefing order issued in NV-15-1048.

8 On March 5, 2015, in appeal no. NV-15-1048, Brain Power
9 America, Inc., and John W. Muije filed an election to have the
10 appeal heard at the U.S. district court. The election identifies
11 the electing parties as "Appellees/Cross-Appellants."

12 Appellants and cross-appellants must file their election to
13 have an appeal heard at the U.S. district court at the time of
14 filing the notice of appeal or cross-appeal. 28 U.S.C.
15 § 158(c)(1)(a). Appellants and cross-appellants are not "other
16 parties" to an appeal or cross-appeal. See In re Snell, 237 B.R.
17 636, 638 (6th Cir. BAP 1999) (a cross-appellant must file its
18 election when filing its cross-appeal, it cannot wait until the
19 appellee election period expires in the main appeal).

20 We conclude appellees/cross-appellants' election is untimely
21 and therefore it is OVERRULED.

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