

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 18 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: MARTIN PALOMINO and
ELIZABETH PALOMINO,

Debtors.

RICHARD HOYT & ASSOCIATES,

Appellant,

v.

MARTIN PALOMINO; et al.,

Appellees.

No. 09-60026

BAP No. AZ-09-1128-JuDM

MEMORANDUM*

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Jury, Dunn, and Montali, Bankruptcy Judges, Presiding

Submitted August 11, 2011**

Before: THOMAS, SILVERMAN, and CLIFTON, Circuit Judges.

Richard Hoyt & Associates (“Hoyt”) appeals from the Bankruptcy Appellate

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Panel's ("BAP") order dismissing Hoyt's late-filed appeal for lack of jurisdiction. To the extent that we have jurisdiction, it is under 28 U.S.C. § 158(d). We review de novo. *Wiersma v. Bank of the West (In re Wiersma)*, 483 F.3d 933, 938 (9th Cir. 2007). We affirm.

The BAP properly dismissed Hoyt's appeal for lack of jurisdiction because Hoyt failed to file a timely notice of appeal. *See* Fed. R. Bankr. P. 8001(f)(1) (certification for direct appeal to court of appeals not effective without timely notice of appeal); *see also In re Wiersma*, 483 F.3d at 938 ("The failure to timely file a notice of appeal is a jurisdictional defect barring appellate review.") (alteration, citation, and internal quotation marks omitted).

Because Hoyt's notice of appeal to the BAP was untimely, we lack jurisdiction to review Hoyt's contentions as to the merits of the bankruptcy court's decision. *See Greene v. United States (In re Souza)*, 795 F.2d 855, 857 (9th Cir. 1986) (noting that this court lacks jurisdiction to review the merits where the appeal from the bankruptcy court was untimely).

Hoyt's remaining contentions are unpersuasive.

AFFIRMED.