

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

IN RE DONALD E. ARMSTRONG,
Debtor.

BAP No. UT-02-038

DONALD E. ARMSTRONG,
Appellant,

Bankr. No. 00B-26592
Chapter 11

v.

KENNETH A. RUSHTON, Trustee;
STEPPE APARTMENTS, LTD.;
STEVEN R. BAILEY, Trustee; and
UNITED STATES TRUSTEE,
Appellees.

ORDER DENYING ELECTION AND
DISMISSING APPEAL
May 22, 2002

Before PUSATERI, BOHANON, and MICHAEL, Bankruptcy Judges.

The matter before the Court is the Notice of Election to Appeal to District Court (“Election”), filed May 20, 2002, by Appellant Donald E. Armstrong.

Section 158(c)(1) of Title 28, United States Code, provides in its relevant part that “each 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.” 28 U.S.C. § 158(c)(1). The form of this election is set forth in Fed. R. Bankr. P. 8001, which provides in its relevant part that “[a]n election to have an appeal heard by the district court under 28 U.S.C. § 158(c)(1) may be made only by a statement of election contained in a separate writing filed within the time prescribed by 28 U.S.C. § 158(c)(1).” Fed. R. Bankr. P. 8001(e). Because the Election was not filed with the notice of appeal, it is untimely.

The Appellant argues that he should be given additional time to file an election

because the notice of appeal was not a new notice of appeal that he filed; instead the notice of appeal was construed by this Court from the Appellant's filing an amended notice of appeal in appeal number UT-02-011, which is currently pending before this Court. The Appellant's arguments do not provide any authority under which this Court can extend the time for filing an election. Further, to the extent that the Appellant sought to add the order that is the subject of the instant appeal to appeal number UT-02-011, he consented to the jurisdiction of this Court.

On May 10, 2002, this Court entered an order requiring the Appellant to pay the filing and docketing fees within ten days, or the appeal would be dismissed without further notice. The ten days has expired, and it appears that the Appellant has not paid the filing and docketing fees. The appeal will therefore be dismissed for failure to prosecute.

Accordingly, it is **HEREBY ORDERED** that the Election is **DENIED**. This appeal is **DISMISSED**.

For the Panel:

Barbara A. Schermerhorn, Clerk of Court

By:

 Deputy Clerk