

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DEE OTTAVIANO, :
Plaintiff :
 :
 :
v. : 3:00-CV-00536 (EBB)
 :
 :
PRATT & WHITNEY DIVISION OF :
UNITED TECHNOLOGIES CORP., :
Defendant :

RULING ON MOTION TO EXTEND TIME TO FILE NOTICE OF APPEAL

Plaintiff has filed a motion seeking this Court's permission to file an untimely notice of appeal. The notice is late for two reasons. Firstly, Plaintiff's counsel excluded Saturdays, Sundays and holidays in his calculation of time. Secondly, Plaintiff asserts that she "is less than learned in the area of appeals and deadlines." Both reasons are unacceptable and the Motion to Extend Time [Doc. No. 65] is hereby DENIED.

Rule 6(a) of the Federal Rules of Civil Procedure could not make it more clear than when calculating a period of time greater than eleven days, Saturdays, Sundays and holidays are included in such computation. It is also equally clear that one has thirty days to file a notice of appeal. Thirty is more than eleven. Hence, a timely notice of appeal had to have been filed no later than August 23, 2002. The filing of the notice on September 3, 2002 is therefore unacceptable as untimely. Plaintiff's counsel is an experienced federal litigator. Not being familiar with the Federal Rules of Civil Procedure is inexcusable. "The time limit

for filing an appeal is mandatory and jurisdictional." Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 61 (1982)(internal quotation marks omitted).

So, too, is Plaintiff's alleged unfamiliarity "with the area of appeals and deadlines." This does not meet the excusable neglect standard of Fed.R.Civ.P. 4(a)(5)(A). "Inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect." Hanley v. Deluxe Caterers of Shelter Rock, Inc., 1999 U.S. App. LEXIS 3485 at * 4 (2d Cir. 1999) *citing to* Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 392 (1993).. Similarly, "[c]ounsel's lack of familiarity with federal procedure is not an acceptable excuse." United States v. Hooper, 43 F.3d 26, 29 (2d Cir. 1994)(per curiam). Even a pro se litigant cannot show excusable neglect by establishing that she was unfamiliar with the appellate process or its deadlines. In Phillips v. Merchants Ins. Group, 1999 LEXIS 8574 at *4-5 (2d Cir. 1999), the Court of Appeals held that a pro se litigant cannot show excusable neglect by establishing that he was confused about the deadline for filing a notice of appeal. The Phillips Court further noted that "[a]lthough there is no evidence that Phillips acted in bad faith in failing to timely file his notice of appeal . . . simple ignorance of the time limitation spelled out in Rule 4(a)(1)(A) did not constitute excusable

neglect." *Id.* at * 5. See also Weinstock v. Cleary, Gottlieb, Steen & Hamilton, 16 F.3d 501, 502-03 (2d Cir. 1994)(plaintiff's misconception of the appellate rules did not constitute excusable neglect; "[T]he excusable neglect standard can never be met by a showing of inability or refusal to read and comprehend the clear language of the Federal Rules.").

In this case, Plaintiff's counsel wrote Plaintiff a letter on August 5, 2002, informing her that she had to make up her mind quickly regarding an appeal, or "the time limit will have expired." *Letter from Attorney Axelrod to Plaintiff dated August 5, 2002.* Plaintiff was represented by experienced counsel in this case. The fact that he did not follow up with his client in a timely fashion when she did not respond to his letter is not excusable neglect.

Relief from a judgment should not ordinarily be granted except "upon a showing of exceptional circumstances." Nemaizer v. Baker, 793 F.2d 56, 61 (2d Cir. 1986). There is a singular lack of exceptional circumstances in this case.

Accordingly, this case is to remain closed and the filing fee for an appeal shall be returned to Plaintiff's counsel. The Notice of Appeal is null and void.

SO ORDERED

ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ____ day of September, 2002.