APPENDIX A

United States Court of Appeals
For the First Circuit

No. 22-9003

IN RE: BABOUCAR B. TAAL,

Debtor,

BABOUCAR B. TAAL,

Appellant.

v.

JOHN CRONIN, Commissioner; MICHAEL STEVEN ASKENAIZER; DAVID C. TENCZA, JACK S. WHITE,

Appellees.

MANDATE

Entered: January 11, 2023

In accordance with the judgment of November 17, 2022, and pursuant to Federal Rule of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.

By the Court:

Maria R. Hamilton, Clerk

cc:
Michael Steven Askenaizer
Israel F. Piedra
Lawrence P. Sumski
Baboucar B. Taal

United States Court of Appeals
For the First Circuit

No. 22-9003

IN RE: BABOUCAR B. TAAL,

Debtor,

BABOUCAR B. TAAL,

Appellant.

v.

JOHN CRONIN, Commissioner; MICHAEL STEVEN ASKENAIZER; DAVID C. TENCZA, JACK S. WHITE,

Appellees.

Before

Barron, Chief Judge,
Lynch, Kayatta,
Gelpí and Montecalvo, Circuit Judges.

ORDER OF COURT

Entered: January 3, 2023

Judgment entered in this case on November 17, 2022. The mandate has not yet issued. **Appellant has filed a "Motion for Reconsideration En Banc . . . ." Pursuant to First Circuit Internal Operating Procedure X(C), the petition for rehearing en banc has also been treated as a petition for rehearing before the original panel.**

We have considered all cognizable arguments set out in Appellant's petition. The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the non-recused judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be **DENIED**.

To the extent Appellant seeks any other relief by this filing, that relief is DENIED.

United States Court of Appeals
For the First Circuit

No. 22-9003

IN RE: BABOUCAR B. TAAL,

Debtor,

BABOUCAR B. TAAL,

Appellant.

v.

JOHN CRONIN, Commissioner; MICHAEL STEVEN ASKENAIZER; DAVID C. TENCZA, JACK S. WHITE,

Appellees.

Before

Lynch, Kayatta and Gelpí,
Circuit Judges.

JUDGMENT

Entered: November 17, 2022

Appellant Baboucar B. Taal appeals from a ruling by the United States Bankruptcy Appellate Panel for the First Circuit ("BAP"), which entertained Taal's appeal from the United States Bankruptcy Court for the District of New Hampshire. We construe Taal's pro se briefing liberally. Erickson v. Pardus, 551 U.S. 89, 94 (2007).

In the normal course, "[w]hen an appeal comes to us by way of the BAP, we independently scrutinize the underlying bankruptcy court decision, reviewing factual findings for clear error and legal conclusions de novo." In re Canning, 706 F.3d 64, 68–69 (1st Cir. 2013). Here, however, the BAP dismissed Taal's appeal because it lacked jurisdiction over part of it and because Taal failed to comply with a BAP order to file certain required documents. On appeal to this court, Taal does not address the BAP judgment or its reasoning, whether in his opening brief, or even in his reply brief. Taal thus has waived any argument for error in the BAP judgment. See United States v. Nishnianidze, 342 F.3d 6, 18 (1st Cir. 2003) (finding pro se argument waived for failure to develop the argument on appeal). Absent any showing of error in the BAP dismissal, we stop

there. See, e.g., In re Morrissey, 349 F.3d 1187, 1190 (9th Cir. 2003) (declining to "reach the merits of the bankruptcy court's ruling" after concluding BAP properly had dismissed appeal as a sanction for failing to comply with briefing rules).

The decision of the BAP dismissing the appeal from the bankruptcy court is **AFFIRMED**. See **Local Rule 27.0(c).**

By the Court:

Maria R. Hamilton, Clerk

cc:
Baboucar B. Taal
Michael Steven Askenaizer
Israel F. Piedra
Lawrence P. Sumski

United States Court of Appeals
For the First Circuit

No. 22-9003

IN RE: BABOUCAR B. TAAL,

Debtor,

BABOUCAR B. TAAL,

Appellant,

v.

JOHN CRONIN, Commissioner; MICHAEL STEVEN ASKENAIZER; DAVID C. TENCZA, JACK S. WHITE,

Appellees.

ORDER OF COURT

Entered: July 25, 2022

Appellant's motions to expand the record and for appointment of counsel are denied. Appellant has not provided an adequate justification for granting either motion.

By the Court:

Maria R. Hamilton, Clerk

cc:
Baboucar B. Taal
Michael Steven Askenaizer
Israel F. Piedra
Lawrence P. Sumski

United States Court of Appeals
For the First Circuit

No. 21-9013

IN RE: BABOUCAR B. TAAL,

Debtor,

BABOUCAR B. TAAL,

Appellant.

v.

JOHN CRONIN, Commissioner; MICHAEL STEVEN ASKENAIZER; DAVID C. TENCZA, JACK S. WHITE,

Appellees.

MANDATE

Entered: June 6, 2022

In accordance with the judgment of May 16, 2022, and pursuant to Federal Rule of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.

By the Court:

Maria R. Hamilton, Clerk

cc:
Michael Steven Askenaizer
Israel F. Piedra
Lawrence P. Sumski
Baboucar B. Taal

United States Court of Appeals
For the First Circuit

No. 21-9013

IN RE: BABOUCAR B. TAAL,

Debtor,

BABOUCAR B. TAAL,

Appellant,

v.

JOHN CRONIN, Commissioner; MICHAEL STEVEN ASKENAIZER; DAVID C. TENCZA, JACK S. WHITE,

Appellees.

Before

Barron, Chief Judge,
Howard and Gelpí, Circuit Judges.

JUDGMENT

Entered: May 16, 2022

After carefully considering Appellant's response to our show cause order, we dismiss the appeal. Among other problems, the appeal appears to be moot, and Appellant fails to adequately address the problem. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) (waiver).

Accordingly, the remaining pending motions are denied as moot.

Dismissed. 1st Cir. Loc. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

United States Court of Appeals
For the First Circuit

No. 21-9013

IN RE: BABOUCAR B. TAAL,

Debtor,

BABOUCAR B. TAAL,

Appellant,

v.

JOHN CRONIN, Commissioner; MICHAEL STEVEN ASKENAIZER; DAVID C. TENCZA, JACK S. WHITE,

Appellees.

Before

Howard, Chief Judge,
Lynch, Thompson, Kayatta
Barron and Gelpí, Circuit Judges.

ORDER OF COURT

Entered: March 21, 2022

This matter is before the court on "Appellant's Motion for Reconsideration En Banc" as to the order entered January 26, 2022. To the extent that order might be subject to en banc reconsideration, the motion has been submitted to the active judges of this court and a majority of the judges have voted that the matter not be heard en banc. The motion is denied.

The remaining pending motions are denied as moot.

By the Court:

Maria R. Hamilton, Clerk

United States Court of Appeals
For the First Circuit

No. 21-9013

IN RE: BABOUCAR B. TAAL,

Debtor,

BABOUCAR B. TAAL,

Appellant.

v.

JOHN CRONIN, Commissioner; MICHAEL STEVEN ASKENAIZER; DAVID C. TENCZA, JACK S. WHITE,

Appellees.

ORDER OF COURT

Entered: March 2, 2022
Pursuant to 1st Cir. R. 27.0(d)

On December 24, 2021, appellant Baboucar Taal filed a pro se notice of appeal from the Bankruptcy Appellate Panel's December 23, 2021 order in No. 21-32 (B.A.P. 1st Cir.) that denied appellant's emergency motion for stay pending appeal. Upon review, this Court appears to lack jurisdiction to consider this appeal as the challenged order does not appear to be a final judgment or an appealable interlocutory order. See 28 U.S.C. § 158(d)(1). Additionally, upon review of the record, it appears that the sale of the property that appellant seeks to stay has already occurred, rendering a stay of such sale moot.

The appellant is ordered to move for voluntary dismissal of the appeal pursuant to Fed. R. App. P. 42(b), or to show cause, in writing, why this appeal should not be dismissed for lack of jurisdiction. The failure to take action by **March 16, 2022**, will lead to dismissal of the appeal for lack of diligent prosecution. 1st Cir. R. 3.0(b).

By the Court:

Maria R. Hamilton, Clerk

cc:
Baboucar B. Taal, Michael Steven Askenaizer, Israel F. Piedra, Lawrence P. Sumski

APPENDIX B

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. NH 21-032

Bankruptcy Case No. 21-10611-BAH

BABOUCAR B. TAAL,
Debtor.

BABOUCAR B. TAAL,
Appellant,

v.

JOHN G. CRONIN, Commissioner,
MICHAEL S. ASKENAIZER, ESQ.,
DAVID C. TENCZA, ESQ., and JACK S. WHITE, ESQ.,
Appellees.

MANDATE
Entered: January 12, 2023

In accordance with the Judgment of February 16, 2022, and pursuant to Federal Rules of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.

FOR THE PANEL:

Dated: January 12, 2023

By: **/s/ Leslie C. Storm**
Leslie C. Storm, Clerk

[cc: Hon. Bruce A. Harwood; Clerk, U.S. Bankruptcy Court, District of New Hampshire; Baboucar B. Taal; Michael S. Askenaizer, Esq.; Lawrence P. Sumski, Esq.; Jack S. White, Esq.]

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. NH 22-004

Bankruptcy Case No. 21-10611-BAH

BABOUCAR B. TAAL,
Debtor.

BABOUCAR B. TAAL,
Appellant,

v.

LAWRENCE P. SUMSKI, Chapter 13 Trustee,
Appellee.

Lamoutte, Cabán, and Katz, U.S. Bankruptcy Appellate Panel Judges.

JUDGMENT OF DISMISSAL

Baboucar Taal (the "Appellant") appeals from the bankruptcy court's February 4, 2022 order (the "Order") granting the motion to dismiss the Appellant's bankruptcy case filed by Lawrence P. Sumski, Chapter 13 Trustee. Because the Appellant filed the notice of appeal after the expiration of the appeal period relating to the Order, this appeal is **DISMISSED** for lack of jurisdiction.

Federal Rule of Bankruptcy Procedure 8002 establishes a 14-day period to appeal the judgments, orders, or decrees of the bankruptcy court. See Fed. R. Bankr. P. 8002(a)(1) ("[A] notice of appeal must be filed with the bankruptcy clerk within 14 days after the entry of the judgment, order, or decree being appealed."). In the First Circuit, the time limits established

for filing a notice of appeal are "mandatory and jurisdictional." Bishay v. Cornetta, No. 18-1383, 2019 WL 10734651, at *1 (1st Cir. Mar. 27, 2019); see also Yamaha Motor Corp. v. Perry Hollow Mgmt. Co. (In re Perry Hollow Mgmt. Co.), 297 F.3d 34, 38 (1st Cir. 2002); Rodriguez Rodriguez v. Banco Popular de P.R. (In re Rodriguez Rodriguez), 516 B.R. 177, 182 (B.A.P. 1st Cir. 2014) (same). Therefore, if an appeal is not taken or otherwise preserved within the 14-day appeal period, the Panel does not have jurisdiction over the appeal, and the appeal will fail. In re Rodriguez Rodriguez, 516 B.R. at 182 (citation omitted); Aguiar v. Interbay Funding, LLC (In re Aguiar), 311 B.R. 129, 134 (B.A.P. 1st Cir. 2004) (citation omitted).

Here, the Order was entered on the docket on February 4, 2022. Therefore, the 14-day appeal period for the Order expired on February 18, 2022. The Appellant did not file the notice of appeal until March 4, 2022. No extension of the appeal period for the Order was requested or granted. As the Appellant filed the notice of appeal outside the appeal period, the appeal was untimely filed, and the Panel lacks jurisdiction to consider it. Accordingly, the appeal is **DISMISSED**.[1]

FOR THE PANEL:

Dated: March 11, 2022

By: /s/ Leslie C. Storm
Leslie C. Storm, Clerk

[cc: Hon. Bruce A. Harwood; Clerk, U.S. Bankruptcy Court, District of New Hampshire; and Baboucar B. Taal; Lawrence P. Sumski, Esq.; Michael S. Askenaizer, Esq.; Jack S. White, Esq.]

[1] Because this untimely appeal is dismissed for lack of jurisdiction, the Panel need not address the Appellant's failure to pay the filing fee as required by Fed. R. Bankr. P. 8003(a)(3)(C) and 1st Cir. BAP L.R. 8003-1(a).

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. NH 21-032

Bankruptcy Case No. 21-10611-BAH

BABOUCAR B. TAAL,
Debtor.

BABOUCAR B. TAAL,
Appellant,

v.

JOHN G. CRONIN, Commissioner,
MICHAEL S. ASKENAIZER, ESQ.,
DAVID C. TENCZA, ESQ., and JACK S. WHITE, ESQ.,
Appellees.

Lamoutte, Cabán, and Finkle, U.S. Bankruptcy Appellate Panel Judges.

JUDGMENT OF DISMISSAL

On December 16, 2021, Baboucar B. Taal (the "Appellant") filed a notice of appeal with respect to the bankruptcy court's order denying his motion seeking sanctions against the appellees for alleged violations of the automatic stay (the "Order Denying Sanctions").[1]

On January 6, 2022, the Panel issued a Conditional Order of Dismissal due to the Appellant's failure to file a designation of items to be included in the record on appeal and a

[1] The Appellant also appealed the bankruptcy court's order denying his motion to stay the order granting appellee, John G. Cronin, relief from the automatic stay (the "Order Denying Stay"). However, on January 25, 2022, the Panel entered a Judgment of Partial Dismissal, dismissing the appeal of the Order Denying Stay for lack of jurisdiction. Therefore, the only order remaining in the appeal is the Order Denying Sanctions.

statement of issues to be presented on appeal as required by Fed. R. Bankr. P. 8009. The Appellant was directed to file the required documents by January 20, 2022 and was explicitly warned: "If the Appellant fails to timely comply with the terms of this Order, the Panel is authorized to dismiss this appeal for lack of prosecution without further notice or hearing. See Fed. R. Bankr. P. 8003(a)(2)." To date, the required documents have not been filed.

The Appellant having failed to comply with the Conditional Order of Dismissal by January 20, 2022, it is hereby **ORDERED** that this appeal is **DISMISSED**. See Fed. R. Bankr. P. 8003(a)(2) (authorizing the Panel to dismiss the appeal if appellant "[f]ail[s] to take any step other than the timely filing of a notice of appeal"); see also In re Cameron, No. 17-11026, 2018 WL 326458, at *6 (D. Mass. Jan. 4, 2018) (stating that where appellant fails to file a designation of the record and statement of the issues as required by Fed. R. Bankr. P. 8009 the court may, in its discretion, dismiss the appeal); Wilson v. Wells Fargo Bank, N.A. (In re Wilson), 402 B.R. 66, 69-70 (B.A.P. 1st Cir. 2009) ("When an appellant fails to provide a record of evidence material to the point the appellant wishes to raise . . . the court in its discretion may . . . dismiss the appeal if the absence of a full record thwarts intelligent and reasoned review.") (quoting Scarfo v. Cabletron Sys., Inc., 54 F.3d 931, 963 (1st Cir. 1995)).[2]

FOR THE PANEL:

Dated: February 16, 2022 By: /s/ Leslie C. Storm
Leslie C. Storm, Clerk

[cc: Hon. Bruce A. Harwood; Clerk, U.S. Bankruptcy Court, District of New Hampshire; and Baboucar B. Taal; Michael S. Askenaizer, Esq.; Lawrence P. Sumski, Esq.; Jack S. White, Esq.]

[2] Because this appeal is dismissed due to the Appellant's failure to comply with Fed. R. Bankr. P. 8009 and the Panel's Conditional Order of Dismissal, the Panel need not address the Appellant's failure to pay the filing fee as required by Fed. R. Bankr. P. 8003(a)(3)(C).

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. NH 21-032

Bankruptcy Case No. 21-10611-BAH

BABOUCAR B. TAAL,
Debtor.

BABOUCAR B. TAAL,
Appellant,

v.

JOHN G. CRONIN, Commissioner,
MICHAEL S. ASKENAIZER, ESQ.,
DAVID C. TENCZA, ESQ., and JACK S. WHITE, ESQ.,
Appellees.

Lamoutte, Cabán, and Finkle, U.S. Bankruptcy Appellate Panel Judges.

JUDGMENT OF PARTIAL DISMISSAL

Baboucar B. Taal (the "Debtor") appeals pro se from the following orders entered by the bankruptcy court on December 17, 2021: (1) the order denying his motion seeking sanctions for alleged violations of the automatic stay (the "Order Denying Sanctions"); and (2) the order denying his motion to stay the order granting John G. Cronin, in his capacity as state court-appointed real estate commissioner ("Cronin"), relief from the automatic stay (the "Order Denying Motion for Stay"). For the reasons set forth below, the Panel concludes the Order Denying Motion for Stay is not final, and it declines to grant discretionary leave to appeal this interlocutory order. Accordingly, the appeal is **PARTIALLY DISMISSED** as to the Order Denying Motion for Stay.

BACKGROUND

The Debtor filed a chapter 13 bankruptcy petition on October 22, 2021. On November 8, 2021, Cronin filed a motion seeking relief from the automatic stay (the "Motion for Stay Relief") so that he could close a sale of the Debtor's marital home (the "Property") pursuant to the terms of the Debtor's final divorce decree.[1] After a hearing, on November 30, 2021, the bankruptcy court entered an order granting in part and denying in part the Motion for Stay Relief (the "Order Granting Relief from Stay"), ruling:

> The automatic stay is modified to permit the Movant to continue with the sale of the Property pursuant to the Final Divorce Decree, and to seek determinations from the Family Court regarding appropriate and reasonable fees for services relating to the sale of the Property, as well as against whose interest in the net sale proceeds those fees and expenses should be charged. However, the Movant does not have relief to pay fees ordered by the Family Court from the Debtor's share of the Property's sale proceeds; and to that extent the Motion is denied. Once the Family Court has made all such required determinations, the Movant or any other party in interest must seek further relief from this Court, so that this Court may determine how the pending bankruptcy proceeding may affect the distribution of the sale proceeds in light of the Bankruptcy Code, Davis v. Cox, 356 F.3d 76 (1st Cir. 2004), and other applicable law.

(footnote omitted).

The Debtor did not appeal the Order Granting Relief from Stay. Instead, on December 3, 2021, he filed: (1) a motion seeking damages from Cronin, Cronin's attorney, and two attorneys who represent Guylaine Taal, the Debtor's former spouse, for alleged violations of the automatic stay (the "Motion for Sanctions"); and (2) a motion to stay the Order Granting Relief from Stay ("Motion for Stay").

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[1] Cronin explained he was appointed by the Ninth Circuit Family Division - Merrimack to sell the Property, which was co-owned by the Debtor and his former spouse, Guylaine Taal, as required under the terms of their final divorce decree. The sale, which was scheduled to close on October 28, 2021, was stayed by the Debtor's bankruptcy filing. It appears, however, that after the court granted Cronin relief from stay, the sale was rescheduled and eventually closed on December 22, 2021.

At a hearing on December 16, 2021, the bankruptcy court denied both motions from the bench. It then entered the Order Denying Sanctions and the Order Denying Motion for Stay the next day. In denying the Motion for Sanctions, the court determined that none of the alleged actions by the respondents violated the automatic stay and, therefore, damages were not warranted under § 362(k).[2] As to the Motion for Stay, the bankruptcy court, citing the elements for obtaining a stay pending appeal under Fed. R. Bankr. P. 8007 as set forth in Elias v. Sumski (In re Elias), 182 F. App'x 3, 4 (1st Cir. 2006), concluded that the Debtor had not demonstrated he was likely to succeed in overturning the Order Granting Relief from Stay. The court reasoned that not only did the Debtor fail to address why the bankruptcy court erred in granting the Motion for Stay Relief, the Rooker-Feldman doctrine precluded the court from altering the state court's orders that directed the sale of the Property.

The Debtor appealed both the Order Denying Sanctions and the Order Denying Motion for Stay. He also filed an emergency motion for stay pending appeal with the Panel, which the Panel denied.

APPELLATE JURISDICTION

Before addressing the merits of an appeal, the Panel must determine that it has jurisdiction, even if the issue is not raised by the litigants. Encanto Rests., Inc. v. Aquino Vidal (In re Cousins Int'l Food, Corp.), 565 B.R. 450, 458 (B.A.P. 1st Cir. 2017); Haddock Rivera v. ASUME (In re Haddock Rivera), 486 B.R. 574, 576 (B.A.P. 1st Cir. 2013) ("[W]e must assay our jurisdiction before proceeding on the merits").

[2] Unless otherwise indicated, all references to specific statutory sections are to the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532.

"Pursuant to 28 U.S.C. §§ 158(a) and (b), the Panel may hear appeals from final judgments, orders, and decrees, . . . or with leave of the court, from interlocutory orders and decrees." Fleet Data Processing Corp. v. Branch (In re Bank of New Eng. Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998) (citations omitted) (internal quotation marks omitted); see also Ritzen Grp., Inc. v. Jackson Masonry, LLC, 140 S. Ct. 582, 587 (2020); Bullard v. Blue Hills Bank, 575 U.S. 496, 501-02 (2015). "A decision is final if it ends the li[ti]gation on the merits and leaves nothing for the court to do but execute the judgment." In re Bank of New Eng. Corp., 218 B.R. at 646 (citations omitted) (internal quotation marks omitted). In contrast, an interlocutory order "only decides some intervening matter pertaining to the cause" and "requires further steps to be taken in order to enable the court to adjudicate the cause on the merits." Id. (citations omitted) (internal quotation marks omitted). Typically, an order denying a motion for a stay pending appeal, such as the Order Denying Motion for Stay at issue here, is an interlocutory order. See In re Elias, 182 F. App'x at 4; see also Greenberg v. U.S. Trustee (In re Greenberg), 735 F. App'x 469, 470 (9th Cir. 2018); Parson v. Unknown, No. 3:18-CV-1449-L, 2018 WL 3046248, at *1 (N.D. Tex. June 20, 2018). As such, the Order Denying Motion for Stay is not immediately appealable as of right.

Notwithstanding this conclusion, the Panel has discretion to treat the notice of appeal as a motion for leave to appeal from an interlocutory order, and to grant leave to appeal pursuant to 28 U.S.C. § 158(a)(3).[3] In determining whether to hear an interlocutory appeal from a bankruptcy court order under 28 U.S.C. § 158(a)(3), appellate courts in this circuit, including the Panel, typically apply the factors set forth in 28 U.S.C. § 1292(b), which governs interlocutory

[3] Although leave of court is generally sought by filing a motion for leave to appeal, the Panel may treat a notice of appeal of a bankruptcy court's interlocutory order as a motion for leave to appeal under 28 U.S.C. § 158(a)(3). See Simon v. Amir (In re Amir), 436 B.R. 1, 8 (B.A.P. 6th Cir. 2010); Belli v. Temkin (In re Belli), 268 B.R. 851, 857 (B.A.P. 9th Cir. 2001).

appeals to the courts of appeal. See, e.g., Bailey v. United States (In re Bailey), 592 B.R. 400, 408 (B.A.P. 1st Cir. 2018); Canadian Pac. Ry. Co. v. Keach, No. 1:17-cv-00278-JDL, 2017 WL 4845733, at *3 (D. Me. Oct. 26, 2017); Rodríguez-Borges v. Lugo-Mender, 938 F. Supp. 2d 202, 212 (D.P.R. 2013) (stating that "most courts have adopted the standard used under 28 U.S.C. § 1292") (citations omitted); Nickless v. Merrill Lynch, Pierce, Fenner & Smith, Inc. (In re Advanced RISC Corp.), 317 B.R. 455, 456 (D. Mass. 2004) (applying 28 U.S.C. § 1292(b) factors). "Section 1292(b) permits appellate review of 'certain interlocutory orders . . . to allow appeals from orders other than final judgments when they have a final and irreparable effect on the rights of the parties.'" In re Bank of New Eng. Corp., 218 B.R. at 652 n.17 (citation omitted). The First Circuit has cautioned, however, that leave to appeal "should be used sparingly and only in exceptional circumstances . . . ." In re San Juan Dupont Plaza Hotel Fire Litig., 859 F.2d 1007, 1010 n.1 (1st Cir. 1988) (citation omitted) (internal quotation marks omitted).

Like other courts, when applying the 28 U.S.C. § 1292(b) factors, the Panel considers: (1) whether the order involves a controlling question of law;[4] (2) as to which there is substantial ground for difference of opinion;[5] and (3) whether an immediate appeal from the order might materially advance the ultimate termination of the litigation.[6] See In re Bailey, 592 B.R. at 408;

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[4] A controlling question of law is an issue "embodied in an order which, if reversed, would terminate the action." In re Jackson Brook Inst., Inc., 280 B.R. at 5.

[5] A substantial ground for difference of opinion occurs only in "rare cases" where an interlocutory appeal presents one or more "difficult and *pivotal* questions of law not settled by controlling authority." In re Bank of New Eng. Corp., 218 B.R. at 653 (citations omitted) (internal quotation marks omitted); see also Watson v. Boyajian (In re Watson), 309 B.R. 652, 660 (B.A.P. 1st Cir. 2004).

[6] "The requirement that an appeal will materially advance the ultimate termination of the litigation is 'closely tied' to the controlling-question-of-law element," and is satisfied "if reversal of the [c]ourt's decision advances the termination of the litigation." Meijer, Inc. v. Ranbaxy Inc., 245 F. Supp. 3d 312, 315 (D. Mass. 2017) (citation omitted).

see also In re Bank of New Eng. Corp., 218 B.R. at 652. All three elements must be satisfied before the court will exercise its discretion to hear an interlocutory appeal. See WM Capital Partners 53, LLC v. Allied Fin., Inc., Civil No. 17-2015 (ADC), 2018 WL 1704474, at *2 (D.P.R. Mar. 30, 2018) (citations omitted).

The Panel concludes the statutory test is not satisfied in this case. This appeal does not involve a controlling issue of law for which there is substantial ground for difference of opinion. On the contrary, the standard in the First Circuit for determining whether to grant a motion for a stay pending appeal is well established. See, e.g., Sindicato Puertorriqueño de Trabajadores v. Fortuño, 699 F.3d 1, 10 (1st Cir. 2012) (stating that a party seeking a stay pending appeal must demonstrate: (1) a likelihood of success on the merits; (2) the likelihood that the moving party will be irreparably harmed in the absence of a stay; (3) issuing a stay will burden the creditors less than denying a stay will burden the debtor; and (4) the effect, if any, on the public interest); Esso Standard Oil Co. v. Monroig-Zayas, 445 F.3d 13, 18 (1st Cir. 2006) (same); Cantera Dorado, Inc. v. PR Asset Portfolio 2013-1 Int'l, LLC (In re Cantera Dorado, Inc.), 512 B.R. 126, 130 (D.P.R. 2014) (same). Nor will an immediate appeal of the Order Denying Motion for Stay materially advance the ultimate termination of the litigation. Thus, the Panel will not exercise its discretion to hear this interlocutory appeal.[7]

[7] While the Panel typically focuses on the 28 U.S.C. § 1292(b) factors, there are two other less frequently applied precepts for exercising discretion to hear an interlocutory appeal. Under the collateral order doctrine, a court may review an interlocutory order where the order: "(1) conclusively determined, (2) an important legal question, (3) completely separate from the merits of the primary action, and (4) [is] effectively unreviewable on appeal from a final judgment on the remaining counts." U.S. Fid. & Guar. Co. v. Arch Ins. Co., 578 F.3d 45, 55 (1st Cir. 2009) (quoting Will v. Hallock, 546 U.S. 345, 349 (2006)). The Forgay-Conrad doctrine "bestow[s] appellate jurisdiction over interlocutory orders when 'irreparable injury' to the aggrieved party may attend delaying appellate review until the litigation is over." In re Bank of New Eng. Corp., 218 B.R. at 649 n.8 (citation omitted). The record does not reflect that interlocutory review is warranted under either of these doctrines. Nor has the Debtor advocated for the Panel's review under any of the precepts for interlocutory review.

CONCLUSION

As the Order Denying Motion for Stay is not a final order and the Panel declines to exercise its discretionary authority to consider it, the appeal of the Order Denying Motion for **Stay is DISMISSED for lack of jurisdiction.**[8]

FOR THE PANEL:

Dated: January 12, 2022

By: **/s/ Leslie C. Storm**
Leslie C. Storm, Clerk

[cc: Baboucar B. Taal; Michael S. Askenaizer, Esq.;
Lawrence P. Sumski, Esq.; Jack S. White, Esq.]

[8] **Because the Panel dismisses the appeal of the Order Denying Motion for Stay for lack of jurisdiction, it need not consider whether there are any mootness issues arising from the apparent sale of the Property on December 22, 2021.**

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. NH 21-032

Bankruptcy Case No. 21-10611-BAH

BABOUCAR B. TAAL,
Debtor.

BABOUCAR B. TAAL,
Appellant,

v.

JOHN G. CRONIN, Real Estate Commissioner,
MICHAEL S. ASKENAIZER, ESQ.,
DAVID C. TENCZA, ESQ., and JACK S. WHITE, ESQ.,
Appellees.

Finkle, U.S. Bankruptcy Appellate Panel Judge.

ORDER DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL

Baboucar B. Taal (the "Debtor") appeals pro se from the following orders entered by the bankruptcy court on December 17, 2021: (1) the order denying his motion for sanctions for alleged violations of the automatic stay (the "Order Denying Sanctions"); and (2) the order denying his motion to stay the order granting John G. Cronin, in his capacity as state court-appointed real estate commissioner ("Cronin"), relief from the automatic stay ("Order Denying First Motion for Stay"). The Debtor has filed an "emergency" motion for a stay pending appeal (the "Second Motion for Stay"). Cronin opposes the Second Motion for Stay.

For the reasons set forth below, the Second Motion for Stay is **DENIED**.

BACKGROUND

The Debtor filed a chapter 13 bankruptcy petition on October 22, 2021. On November 8, 2021, Cronin filed a motion seeking relief from the automatic stay (the "Motion for Stay Relief") so that he could close a sale of the Debtor's marital home (the "Property") pursuant to the terms of the Debtor's final divorce decree.[1] After a hearing, on November 30, 2021, the bankruptcy court entered an order granting in part and denying in part the Motion for Stay Relief (the "Order Granting Relief from Stay"), ruling:

> The automatic stay is modified to permit the Movant to continue with the sale of the Property pursuant to the Final Divorce Decree, and to seek determinations from the Family Court regarding appropriate and reasonable fees for services relating to the sale of the Property, as well as against whose interest in the net sale proceeds those fees and expenses should be charged. However, the Movant does not have relief to pay fees ordered by the Family Court from the Debtor's share of the Property's sale proceeds; and to that extent the Motion is denied. Once the Family Court has made all such required determinations, the Movant or any other party in interest must seek further relief from this Court, so that this Court may determine how the pending bankruptcy proceeding may affect the distribution of the sale proceeds in light of the Bankruptcy Code, Davis v. Cox, 356 F.3d 76 (1st Cir. 2004), and other applicable law.

(footnote omitted).

The Debtor did not appeal the Order Granting Relief from Stay. Instead, on December 3, 2021, he filed: (1) a motion seeking damages from Cronin, his attorney, and two attorneys who represent Guylaine Taal, the Debtor's former spouse, for alleged violations of the automatic stay (the "Sanctions Motion"); and (2) a motion to stay the Order Granting Relief from Stay ("First Motion for Stay").

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[1] According to Cronin, he was appointed by the Ninth Circuit Family Division - Merrimack to sell the Property, which was co-owned by the Debtor and his former spouse, Guylaine Taal, as required under the terms of their final divorce decree. The sale was scheduled to close on October 28, 2021. However, due to the Debtor's bankruptcy filing, the automatic stay prevented the sale from closing. In his opposition to the Second Motion for Stay, Cronin informs the Panel that the closing was rescheduled for December 22, 2021 3:00 p.m., a detail that was absent from the Debtor's Second Motion for Stay. As discussed later, it appears that the sale was, in fact, consummated on December 22, 2021 as scheduled.

At a hearing on December 16, 2021, the bankruptcy court orally denied both motions. It then entered the Order Denying Sanctions and the Order Denying First Motion for Stay the next day. In denying the Motion for Sanctions, the court determined that none of the alleged actions by the respondents violated the automatic stay and, therefore, damages were not warranted under § 362(k).[2] Specifically, the court ruled that: (1) any actions the Debtor complained of that preceded the filing of the bankruptcy petition did not violate the automatic stay; (2) Cronin's filing of a motion for relief from the automatic stay is permitted by the Bankruptcy Code and did not violate the stay; (3) a motion filed by Cronin in the state court informing that court of the Debtor's bankruptcy filing and requesting an extension of the state court-ordered deadline for consummating the sale of the Property did not violate the automatic stay; and, (4) an alleged "walk through" of the Property, at which neither the Debtor nor the respondents were present, did not violate the automatic stay.

As to the First Motion for Stay, the bankruptcy court, citing the elements for obtaining a stay pending appeal under Bankruptcy Rule 8007 as set forth in Dimitri v. Sumski (In re Elias), 182 F. App'x 3, 4 (1st Cir. 2006), concluded that the Debtor had not demonstrated he was likely to succeed in overturning the Order Granting Relief from Stay. The court reasoned that not only did the Debtor fail to address why the bankruptcy court erred in granting the Motion for Stay Relief, the Rooker-Feldman doctrine precluded the court from altering the state court's orders that directed the sale of the Property.

[2] All references to specific statutory sections are to the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "Bankruptcy Rule" are to the Federal Rules of Bankruptcy Procedure and all references to "BAP Local Rule" are to the Local Rules for the U.S. Bankruptcy Appellate Panel for the First Circuit.

The Debtor appealed both the Order Denying Sanctions and the Order Denying First Motion for Stay. He also filed the Second Motion for Stay with the Panel, which is the subject of this order. It is not clear from the Second Motion for Stay whether the Debtor is asking the Panel to stay the Order Granting Relief from Stay (as he did in the bankruptcy court) or one of the orders on appeal—either the Order Denying Sanctions or the Order Denying First Motion for Stay. The basis for the requested relief is similarly unclear. Although he cites Bankruptcy Rule 8007 in cursory fashion in the Second Motion for Stay, he does not identify or address any of the requirements for obtaining a stay pending appeal under that rule. The essence of his request is best captured in the following excerpt from his motion:

> Appellant's [r]elief sought is for this panel . . . to stay the very act petitioner here and similarly situated United State[s] citizens seek daily in our courts against arbitrariness and to secure their hard earned property (a homestead) here afforded to all . . . and allowed to settle their affairs in a protected status and federal (constitutionally provided, provision and guaranteed) spheres. For in a Title 11 proceeding and as the bankr[uptcy] judge seems to waive my rights, protection and privileges, which is exactly the provision protected without regards[.]

Cronin filed an opposition to the Second Motion for Stay, emphasizing that the Debtor has not identified what order he seeks to stay, and arguing that the Debtor has failed to establish each of the four elements required for obtaining a stay pending appeal. In a supplement to his opposition, Cronin informs the Panel that the sale closed on December 22, 2021 as scheduled and that a deed transferring the Property to the buyer has been recorded in the registry of deeds.

The Debtor filed a reply to Cronin's opposition asserting, for the first time, that all four elements required for a stay pending appeal are met. He claims he will suffer irreparable harm if a stay is not granted as the Property will be sold at an auction to "the lowest chosen Cronin bidder" and that no other parties will be harmed by a stay as his ex-spouse's interest in the Property is provided for in his chapter 13 plan. He also contends the public interest will be

harmed if the Property is sold because an "identical home" in the same neighborhood sold for $250,000 more than the sale price for the subject Property. He does not address the likelihood of prevailing on the merits of his appeal, except to say there is no caselaw that permits the court to grant relief from the automatic stay "under false pretense during a clear violation of the 'automatic stay[.]'"

DISCUSSION

I. The Applicable Standards

A. Stays Pending Appeal

Bankruptcy Rule 8007 governs requests for a stay pending appeal. See Fed. R. Bankr. P. 8007 (providing that a party may file a motion for "a stay of a judgment, order, or decree of the bankruptcy court pending appeal"). A party seeking a stay pending appeal under Bankruptcy Rule 8007 must move first in the bankruptcy court for such relief. Fed. R. Bankr. P. 8007(a)(1). If such a motion was first made in the bankruptcy court, the motion subsequently filed with the BAP "must . . . state that the court has not yet ruled on the motion, or state that the court has ruled and set out any reasons given for the ruling." Fed. R. Bankr. P. 8007(b)(2)(B). While a party may also file a motion for a stay pending appeal in the court where the appeal is pending, Fed. R. Bankr. P. 8007(b)(1), such a motion must "show that moving first in the bankruptcy court would be impracticable." Fed. R. Bankr. P. 8007(b)(2)(A). In either case, the motion filed with the BAP must also include: (1) "the reasons for granting the relief requested and the facts relied upon"; (2) "affidavits or other sworn statements supporting facts subject to dispute"; and (3) "relevant parts of the record." Fed. R. Bankr. P. 8007(b)(3).

As to the substantive requirements for obtaining a stay pending appeal, in the First Circuit, the movant must establish: (1) a likelihood of success on the merits; (2) the potential for

irreparable harm in the absence of a stay; (3) whether issuing a stay will burden the respondent less than denying a stay will burden the movant; and (4) the effect, if any, on the public interest. See Sindicato Puertorriqueño de Trabajadores v. Fortuño, 699 F.3d 1, 10 (1st Cir. 2012); Esso Standard Oil Co. v. Monroig-Zayas, 445 F.3d 13, 18 (1st Cir. 2006) (citations omitted). The movant bears the burden of establishing that these four factors weigh in its favor, and it is well settled that a court should only grant a stay of the order subject to appeal if each of these elements are present. See In re Handel, 242 B.R. 789, 791 (Bankr. D. Mass. 1999) (citing In re Miraj & Sons, Inc., 201 B.R. 23, 26 (Bankr. D. Mass. 1996)); Access Cardiosystems, Inc. v. Fincke (In re Access Cardiosystems, Inc.), 340 B.R. 656, 660 (Bankr. D. Mass. 2006).

A movant's failure to satisfy all four prongs of the standard for granting a stay pending appeal dooms the motion. See Eck v. Dodge Chem. Co. (In re Power Recovery Sys., Inc.), 950 F.2d 798, 804 (1st Cir. 1991) (citations omitted); In re Access Cardiosystems, Inc., 340 B.R. at 659-60. "Of these four factors, the movant's likelihood of success 'is the touchstone of the . . . inquiry.'" Me. Educ. Ass'n Benefits Tr. v. Cioppa, 695 F.3d 145, 152 (1st Cir. 2012) (citation omitted). "[I]f the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity." New Comm Wireless Servs., Inc. v. SprintCom, Inc., 287 F.3d 1, 9 (1st Cir. 2002).

B. Emergency Motions

In addition, both the Bankruptcy Rules and the Local BAP Rules impose certain procedural requirements for seeking emergency determination of a motion, including motions for stay pending appeal. Bankruptcy Rule 8013(d) provides that an emergency motion must "be accompanied by an affidavit setting out the nature of the emergency." Fed. R. Bankr. P. 8013(d). BAP Local Rule 8013-(d)(2) further requires the movant, before filing an emergency motion, to

"telephone the BAP to provide advance notice of the filing." 1st Cir. BAP L.R. 8013-(d)(2). It also requires that an emergency motion must "set forth a date or period within which [the movant] seeks such determination and request that the period for response be reduced to a specified date or period." 1st Cir. BAP L.R. 8013-(d)(2).

II. Applying the Standards

A. Emergency Consideration

Applying the above standards, the Panel first concludes that the Debtor has failed to satisfy the procedural requirements for seeking emergency determination of the Second Motion for Stay. Although the Second Motion for Stay is styled as an "emergency" motion, the Debtor failed to: (1) include an affidavit describing the nature of the emergency; (2) telephone the BAP clerk to provide advance notice of the filing; (3) identify the date by which he seeks a ruling on the Stay Motion; or (4) request that the response period be reduced to a specified date. See Fed. R. Bankr. P. 8013(d)(2)(A) and 1st Cir. BAP L.R. 8013-1(d)(1)-(2). Significantly, the Debtor did not identify any imminent or impending action that would constitute an emergency warranting an expedited determination of the Second Motion for Stay. Accordingly, the Debtor's request for emergency consideration is denied.

B. Stay Pending Appeal

The Panel also concludes the Debtor has failed to comply with both the procedural and substantive requirements for obtaining a stay pending appeal. As stated previously, it is not clear from the Second Motion for Stay whether the Debtor is asking the Panel to stay the Order Granting Relief from Stay (as he did in the bankruptcy court) or one of the orders on appeal—either the Order Denying Sanctions or the Order Denying First Motion for Stay. If it is the former—a request to stay the Order Granting Relief from Stay—the motion is easily dispatched.

The Debtor never appealed the Order Granting Relief from Stay, and the time to do so has expired. See Fed. R. Bankr. P. 8002(a)(1) (requiring notice of appeal to be filed within 14 days after entry of order being appealed). The express language of Bankruptcy Rule 8007(b) contemplates a *pending appeal* with respect to the order to be stayed. See Fed. R. Bankr. P. 8002(b) (providing that a motion to stay a bankruptcy court order "may be made in the court where the *appeal is pending*") (emphasis added). Here, there is no pending appeal of the Order Granting Relief from Stay and, therefore, no stay pending appeal can be issued with respect to that order. See Dawson v. Bank of N.Y. Mellon, 764 F. App'x 416, 418 (5th Cir. 2019) (denying motion for stay pending appeal under corresponding Fed. R. App. P. 8(a) as there was no appeal pending). And, in any event, as it appears that Cronin's sale of the Property to a third-party buyer was consummated on December 22, 2021, any request to stay the Order Granting Relief from Stay is now moot.

To the extent the Debtor seeks to stay either the Order Denying Sanctions or the Order Denying First Motion for Stay, he has failed to satisfy the procedural requirements for obtaining a stay pending appeal. First, he did not file a motion for a stay pending appeal with the bankruptcy court as to either of those orders or explain in the Second Motion for Stay why seeking such relief from the bankruptcy court would have been "impracticable." See Fed. R. Bankr. P. 8007(a)(1)(A) and (b)(2)(A). "Failure to present the motion to the bankruptcy court in the first instance will ordinarily result in denial of a motion seeking the stay filed with the district court or appellate panel." Collier on Bankruptcy ¶ 8007.08 (Richard Levin & Henry J. Sommer eds., 16th ed.) (citing In re Hake, No. 17-8035, 2017 Bankr. LEXIS 4382 (B.A.P. 8th Cir. Dec. 21, 2017)) (other citation omitted). Second, the Debtor did not submit an affidavit supporting his request for a stay as required by Bankruptcy Rule 8007(b)(3). A movant's failure to satisfy

Bankruptcy Rules 8007(b)(2) and (b)(3) "renders the motion facially defective." Kolobotos Props. v. Thomas, No. 4:21-CV-120-SDJ, 2021 WL 2953687, at *3 (E.D. Tex. Mar. 1, 2021).

Additionally, not only has the Debtor failed to meet the procedural requirements for obtaining a stay pending appeal (on an emergency basis or otherwise), he has also failed to demonstrate all four of the elements required for obtaining a stay pending appeal. Although the Debtor contends that the second, third and fourth prongs—irreparable harm, weighing the harms, and the public interest—have been met, his arguments are unpersuasive. He does not argue, let alone demonstrate, that he is likely to succeed on the merits of his appeal, the most important of the four requirements. See Me. Educ. Ass'n Benefits Tr., 695 F.3d at 152. In order to prevail on his appeal of the Order Denying Sanctions, the Debtor would have to prove that the bankruptcy court erred in concluding that none of the actions alleged in the Motion for Sanctions violated the automatic stay. See In re DeSouza, 493 B.R. 669, 672 (B.A.P. 1st Cir. 2013) ("[A] bankruptcy court's determination as to whether the automatic stay provisions of § 362 have been violated involves a question of law that is subject to *de novo* review."). The Debtor, however, does not address the bankruptcy court's rulings in the Order Denying Sanctions or explain how those rulings constituted legal error. Nor has the Debtor argued, or demonstrated, he is likely to prevail on the merits of his appeal of the Order Denying First Motion for Sanctions. Further, the Order Denying First Motion for Sanctions is interlocutory and does not satisfy the requirements for interlocutory review under 28 U.S.C. § 1292(b), so the current appeal of that order will not reach a disposition on the merits. See Maali v. Harrington (In re Ortega), BAP No. MW 20-015, slip op. (B.A.P. 1st Cir. Apr. 28, 2020); see also Elias v. Sumski (In re Elias), 182 F. App'x 3, 4 (1st Cir. 2006); Greenberg v. U.S. Tr. (In re Greenberg), 735 F. App'x 469, 470

(9th Cir. 2018); Parson v. Unknown, No. 3:18-CV-1449-L, 2018 WL 3046248 at *1 (N.D. Tex. June 20, 2018).

Accordingly, as the Debtor has failed to establish the four elements for obtaining a stay pending appeal, the Second Motion for Stay must be denied. See In re Power Recovery Sys., Inc., 950 F.2d at 804.

CONCLUSION

The Debtor has met neither the procedural nor substantive requirements for obtaining a stay pending appeal and the Second Motion for Stay is hereby **DENIED**.

FOR THE PANEL:

Dated: December 23, 2021 By: /s/ Leslie C. Storm
Leslie C. Storm, Clerk

[cc: Baboucar B. Taal; Michael S. Askenaizer, Esq.; Lawrence P. Sumski, Esq.; Jack S. White, Esq.]

APPENDIX C

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:

Bk. No. 21-10611-BAH
Chapter 13

Baboucar B Taal,
Debtor

ORDER

On December 27, 2021, Lawrence P. Sumski, the chapter 13 trustee (the "Trustee") filed a motion seeking to dismiss the Debtor's chapter 13 case (Doc. No. 133) (the "Motion"). The **Motion was served that same date on the Debtor, who is proceeding pro se, at the address the** Debtor provided to the Court when he filed bankruptcy, i.e., 59 Essex Road, Bedford, NH **03110.**[1] **The Trustee also provided notice that a hearing would be held on the Motion on February 4, 2022, and that objections to the Motion should be filed with the Court no later than** January 28, 2022. Neither the Debtor nor any other party in interest objected to the Motion. The **Court held a hearing on the Motion on February 4, 2022, at which the Debtor, the Trustee, and** Attorneys Michael Askenaizer (on behalf of Commissioner John Cronin) and Jack White (on **behalf of the Debtor's former spouse, Guylaine Taal) appeared.**

In the Motion, the Trustee sought dismissal of the Debtor's case for the following reasons:

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[1] At the hearing on the Motion the Debtor indicated he did not receive the Motion. The Court recognizes **that as of December 27, 2021, the Debtor's former marital home located at 59 Essex Road in Bedford, was no longer the Debtor's residence as it had been sold five days earlier on December 22, 2021. Nonetheless, as of this date, the Debtor has not provided the Court with an updated mailing address. Federal Rule of Bankruptcy Procedure 4002(a)(5) requires debtors to file a statement of any change of a** debtor's address. Further, LBR 4002-2 provides that "The debtor shall notice the court, any trustee **appointed in the case and the debtor's attorney of record, in writing, whenever the debtor's mailing address changes while the case is pending. Failure to comply with this rule may result in dismissal of the case, granting of relief against the debtor based upon notice to the last address of record in the case or such other sanctions as the court may deem appropriate."**

1. The Debtor failed to make plan payments.

2. The Debtor's plan lacked feasibility as it relied on (a) the Debtor receiving income from a future endeavor, and (b) the Debtor being successful with respect to litigation concerning his former marital home.

3. The Debtor failed to produce required documentation: (a) his 2020 tax return; (b) proof of insurance on his real property; and (c) prepetition bank statements.

4. The Debtor failed to serve and notice his chapter 13 plan.

5. The Debtor failed to provide proof of his Social Security number.

At the hearing, the Trustee confirmed that (1) the Debtor still had made no plan payments, with three having become due since the Debtor's case was filed in October 2021; (2) the Debtor still had not commenced his new business endeavor; (3) the Debtor's marital home had been sold, which obviated the need for proof of insurance and prevented the Debtor from refinancing the home as provided in his chapter 13 plan; and (4) the Debtor still had not produced a copy of his 2020 tax return, missing bank statements, or proof of his Social Security number.[2]

While the Debtor did not file a written objection to the Motion, the Debtor was given an opportunity at the hearing to address the merits of the Motion. The Debtor did not dispute the Trustee's allegations. He indicated that he thought the sole basis on which the Trustee sought to dismiss his case was his failure to produce proof of his Social Security number, which the Court does not find to be a creditable statement. He indicated that he was unable to produce various other documents because his ex-wife and the Commissioner were preventing him from retrieving them, which is contrary to the record in this case. At least as of this Court's order dated

[2] The Court notes that, after being ordered by the Court on December 23, 2022 (Doc. No. 124) to serve and notice his plan, the Debtor did so on December 29, 2021 (Doc. Nos. 137 and 149). However, the plan continued to suffer from material deficiencies and omissions uncorrected from its previous iteration, which was not filed in the required form. See Doc. No. 60.

November 30, 2021 (Doc. No. 57), it was clear that the Debtor was free to retrieve his personal property, but he has apparently not yet done so.

Attorney Askenaizer also spoke at the hearing and argued in favor of dismissal, contending that the purpose of the Debtor's bankruptcy filing was not to deal with creditor claims but rather to collaterally attack the prepetition order of the state family court, which required the sale of the Debtor's marital home. He notes the Debtor was unsuccessful in that regard, the home having been sold in accordance with the orders of both this Court and the state family court. In addition to pointing out that the Debtor does not have a regular source of income and has not made any plan payments, Attorney Askenaizer noted that the Debtor has not paid his appellate filing fee[3] (as well as various documents required to be filed in his pending appeal) and has failed to pay his domestic support obligations postpetition, at least according to Guylaine Taal's objection to confirmation of the Debtor's plan wherein she states the Debtor has not made any postpetition child support payments (Doc. No. 189 at n.4).[4] The Debtor did not dispute these allegations. Instead, he repeated statements he has made before about individuals committing fraud and acting in concert to deprive him of his marital home.

For the reasons set forth at hearing and in this order, the Court dismisses the Debtor's chapter 13 bankruptcy case pursuant to 11 U.S.C. § 1307. Specifically, the Court dismisses the case pursuant to § 1307(c)(1) because the Debtor has caused unreasonable delay that is prejudicial to creditors in that he has failed to provide documentation required to be produced by Federal Rule of Bankruptcy Procedure 4002(b)(1)(B), (b)(2)(B), and (b)(3), i.e., evidence of his

[3] The Court notes that the deadline to file that filing fee was extended by this Court to February 9, 2022 (Doc. No. 171).

[4] Attorney White did not deny this allegation at the hearing.

Social Security number, bank account statements, and his federal income tax return. The Court dismisses the case under § 1307(c)(4) as the Debtor has failed to commence making timely payments under 11 U.S.C. § 1326.[5] The Court also dismisses the case under § 1307(c)(11) as the Debtor has failed to pay postpetition domestic support obligations. Further, pursuant to 11 U.S.C. § 109(e), a person is only eligible to be a debtor under chapter 13 if he is "an individual with regular income" and the record reflects the Debtor does not have regular income.[6] Lastly, the Debtor has not produced a copy of his 2020 income tax return and the Debtor has not explained why he has not done so.[7] Accordingly, the Motion is granted, and the case is dismissed.

ENTERED at Concord, New Hampshire.

Date: February 4, 2022

/s/ Bruce A. Harwood
Bruce A. Harwood
Chief Bankruptcy Judge

[5] At the hearing, the Debtor asked that the chapter 13 case itself be stayed for a period of 90 days to permit him to prosecute appeals from various orders of this Court. However, the Debtor has never appealed the Order on Motion for Relief that permitted the sale of the property (Doc. No. 57), which the Debtor intended to refinance. The refinance was one of the essential premises of his proposed plan. A stay of this case therefore would not appear to affect the proposed plan's viability.

[6] While Sch. I reflects the Debtor has $82,400 in monthly (sic) rental and salary income, that appears inaccurate as the Debtor has stated at other hearings—and apparently at his first meeting of creditors—that he plans to open a convenience store, which is mentioned in Question 13 of Sch. I. On November 24, 2021, the Debtor attested in his Statement of Financial Affairs (Doc. No. 49), Question 4, that he had no income from employment or from operating a business during 2021 or the previous two calendar years.

[7] 11 U.S.C. § 521(e)(2)(B) provides that the Court shall dismiss a case if a federal income tax return, for the most recent tax year ending immediately before the commencement of the case and for which a federal income tax return was filed, has not been provided not later than seven days before the date first set for the first meeting of creditors, unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor.