

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In Re:

**THOMAS L. GARY and
KAREN E. GARY,
Debtors.**

**Chapter 7
Case No. 99-10618**

Appearances:

*Raymond J. Obuchowski, Esq.
Obuchowski Law Office
Bethel, VT
Chapter 7 Trustee*

*C. Dennis Hill, Esq.
Hill, Unsworth, Barra &
Bowles, PLC
St. Johnsbury, VT
Attorney for the Claimant*

MEMORANDUM OF DECISION

The matter before the Court is the chapter 7 Trustee's objection to Thomas Blackstone's Proof of Claim (Claim No. 18) on the grounds that it is a "late claim." For the reasons set forth below, the Trustee's objection is sustained and the claim shall be treated as a late filed claim.

JURISDICTION

This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

FACTS

On April 29, 1999, the debtors, Thomas L. Gary and Karen E. Gary, filed their voluntary petition for relief under chapter 13 of the Bankruptcy Code. The oral motion by Debtors to convert the case to chapter 7 was granted on October 4, 1999. On October 8, 1999, Raymond J. Obuchowski, Esq. was appointed Trustee.

On December 9, 1999, a Notice to File Claim was issued indicating that the deadline to file a proof of claim applicable to all creditors was March 8, 2000. The Notice specified that “all creditors must file a timely proof of claim in order to participate in a distribution of funds available” in the case. The claimant, Thomas Blackstone, mailed his proof of claim, in the amount of \$1,400, on March 6, 2000, and it was received and filed by the Clerk’s Office on March 10, 2000. The claimant does not dispute that he received timely notice of the bar date. The Trustee objects to the claim as untimely because it was filed two days after the time for filing claims had expired. The claimant seeks to have this Court excuse the late filing, and treat the claim as timely, pursuant to its general equitable powers, since the proof of claim was mailed two days in advance of the bar date.

DISCUSSION

Bankruptcy Rule 3002(c) governs the time within which proofs of claims must be filed in chapter 7 and chapter 13 cases. It is a longstanding and consistent rule in this district that the time allowed for filing proofs of claims under Rule 3002(c) constitutes a statute of limitations barring late claims. *See In re Roberts*, 98 B.R. 664 (Bankr.D.Vt. 1989). The rule that late-filed claims in chapter 7 cases are barred under Rule 3002(c) remains the prevailing rule in this district and elsewhere, and this Court lacks equitable discretion to enlarge the time for filing proofs of claim by claimants who received timely notice of the bar date. *See In re Gardenhire*, 209 F.3d 1145, 1148-51 (9th Cir. 2000)(collecting cases); *Jones v. Arros*, 9 F.3d 79 (10th Cir. 1993); *In re Coastal Alaska Lines*, 920 F.2d 1428, 1432-33 (9th Cir. 1990); *Cumberland Oil Corp. v. Thropp*, 791 F.2d 1037, 1040 (2d Cir. 1986); *In re Elmont Electric Co.*, 206 B.R. 41 (Bankr. E.D.N.Y. 1997); *In re Bailey*, 151 B.R. 28 (Bankr. N.D.N.Y. 1993)(collecting cases); *see also 9 Collier on Bankruptcy*, 3002.03[1] (“courts have uniformly held that no extension of the time fixed by Rule 3002(c) may be granted after the time has passed”).

Furthermore, service by mail does not extend the period for a party to submit the proof of claim. *See Matter of Robintech*, 863 F.2d 393, 395-96 (5th Cir. 1989); *In re Roberts, supra*; *In re Golodetz*, 198 B.R. 441, 443 (Bankr. S.D.N.Y. 1996). Absent defective service or the application of one of the five exceptions recognized by Rule 3002 and not applicable here, the late filed claim is fatally defective and must be denied, even where, as here, the refusal to allow the claim would be harsh under the circumstances. *See In re Bailey*, 151 B.R. at 30; *see also In re Nohle*, 93 B.R. 13, 16 (Bankr. N.D.N.Y. 1988)(proof of claim filed one day late must be expunged); *In re Bailey, supra* (same).

Based upon the foregoing, the Trustee's objection to Claim No. 18 filed by Thomas Blackstone is sustained and the claim shall be treated as a late filed claim in this case.

December 5, 2000
Rutland, Vermont

/s/ Colleen A. Brown
Hon. Colleen A. Brown
United States Bankruptcy Judge