UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 15th day of November, two thousand and ten.

PRESENT: BARRINGTON D. PARKER,
RICHARD C. WESLEY,
Circuit Judges,
BARBARA S. JONES*
District Judge.

IN RE: B.A.R. ENTERTAINMENT MANAGEMENT, INC.,

Debtor.

PATRICIA A. SMALLS,

Appellant,

-v.- 09-4069-bk

COLASANTI & IURATO, LLP, GLEN IURATU, B.A.R. ENTERTAINMENT MANAGEMENT, INC., B.A.R. ENTERTAINMENT, INC., RAY D. COPELAND, RATTET PASTERNAK & GORDON-OLIVER, LLP, JULIE A. CVEK, ARLENE GORDON-OLIVER, JAMES B. GLUCKSMAN,

---

* The Honorable Barbara S. Jones, of the United States District Court for the Southern District of New York, sitting by designation.

Appellees.

FOR APPELLANT: PATRICIA A. SMALLS, New York, NY.

FOR APPELLEE: KYLE C. MCGOVERN, Lyons McGovern LLP, Sleepy Hollow, NY (*Counsel for Colasanti & Iurato, LLP*); JAMES B. GLUCKSMAN, Harrison, NY (*Counsel for Rattet Pasternak & Gordon-Oliver, LLP*).

Appeal from a judgment of the United States District Court for the Southern District of New York (Daniels, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court be **AFFIRMED.**

Appellant Patricia A. Smalls, *pro se*, appeals from a judgment of the United States District Court for the Southern District of New York (Daniels, *J.*) granting Appellees' motions to dismiss her appeal from a decision of the United States Bankruptcy Court for the Southern District of New York as untimely filed. We assume the parties' familiarity with the underlying facts, the procedural history, and the issues presented for review.

We conclude that the district court correctly dismissed Smalls's bankruptcy appeal. The time limit prescribed by Rule 8002(a) of the Federal Rules of Bankruptcy Procedure for filing an appeal from a judgment or order of the

bankruptcy court "is jurisdictional, and . . . in the absence of a timely notice of appeal in the district court, the district court is without jurisdiction to consider the appeal, regardless of whether the appellant can demonstrate 'excusable neglect.'" *In re Siemon*, 421 F.3d 167, 169 (2d Cir. 2005) (per curiam). Under the version of Rule 8002(a) in effect at the time of the underlying events, Smalls had ten days after the bankruptcy court dismissed her adversarial proceeding to file a notice of appeal; she did not file her notice until twenty-one days after that court entered its order. Accordingly, her notice of appeal was untimely filed, and the district court lacked jurisdiction over her appeal.

For the foregoing reasons, the judgment of the district court is hereby **AFFIRMED**. We therefore deny Smalls's pending motion to strike as moot.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk