

**PRIOR HISTORY:** Carroll v. N. Shore Real Estate Corp. (In re Prosser), 2010 Bankr. LEXIS 1566 (Bankr. D.V.I., May 26, 2010)

**CASE SUMMARY:**

**OVERVIEW:** Appellant filed a notice of appeal from a decision of the bankruptcy court. Appellee trustee moved to dismiss the appeal for failure to prosecute under Fed. R. Bankr. P. 8001(a). Of the six Poulis factors, five weighed in favor of dismissal and one weighed against dismissal. The court took into account the possibility that appellant's counsel had some of the responsibility for its failure to follow the court's scheduling order. Nonetheless, on balance, the Poulis factors demonstrated that dismissal of the appeal was an appropriate sanction for appellant's failure to file its brief.

**OUTCOME:** Motion to dismiss granted.

**CORE TERMS:** summary judgment, scheduling, reconsideration, deadline, weigh, failure to prosecute, designation, discovery, failure to comply, affirming, bankruptcy proceedings, extension of time, general denials, citations omitted, genuine issue, effectiveness, reconsider, notice of appeal, failure to follow, bad faith, financial resources, deemed admitted, dilatoriness, non-moving, willful, incur, Bankruptcy Rules, matter of law, personal responsibility, clear error

**LexisNexis(R) Headnotes**

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[HN1] Under Fed. R. Bankr. P. 8001(a), the district court is empowered to dismiss an appeal for failure to prosecute or otherwise follow the procedures set out in the Bankruptcy Rules. Before such a dismissal occurs, a district court must consider six factors outlined in Poulis v. State Farm Fire and Cas. Co. In Poulis, the U.S. Court of Appeals for the Third Circuit stated that a district court must balance the following factors: (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense.

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[HN2] An appeal from a judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel shall be taken by filing a notice of appeal with the clerk within the time allowed by Fed. R. Bankr. P. 8002. An appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal. Fed. R. Bankr. P. 8001(a) (2011).

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