



**IT IS ORDERED** as set forth below:

**Date: October 11, 2011**

**W. H. Drake**  
**U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBER</b>
	:	
JAMES WILLIAM BUCHANAN,	:	07-11604-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
DEBTOR.	:	BANKRUPTCY CODE

**ORDER**

Before the Court is the Request for Consideration and Inclusion in Final Settlement and Compensation, filed by Moises Coria, dba Moises Coria Drywall (hereinafter "Coria"). The Court cannot grant the request of Coria for payment of funds from this Chapter 7 estate.

**FINDINGS OF FACT AND PROCEDURAL HISTORY**

James William Buchanan filed a voluntary petition under Chapter 7 of the

Bankruptcy Code on July 5, 2007. On July 23, 2007, Janet Watts (hereinafter the “Trustee”) was appointed as the trustee. The Clerk of Court issued a notice of the commencement of the bankruptcy case on July 24, 2007. That notice advised creditors that they should not file a proof of claim unless later advised to do so. This notice was served upon Coria.

On September 13, 2007, the Trustee filed a notice of report of assets and a request to set a claims bar date. In response, the Clerk of the Court issued a notice setting December 18, 2007 as the deadline for filing a proof of claim. The Clerk also served a copy of this notice on Coria, but Coria did not file a proof of claim prior to December 18, 2007.

On July 18, 2011, the Trustee filed her final report, to which Coria objected on the basis that the report did not evidence the Trustee’s intent to pay his unsecured claim. The Court scheduled a hearing on the Trustee’s final report for August 12, 2011, but Coria failed to appear at the hearing. After considering the Trustee’s comments with regard to her final report and noting the fact that the Claims Register did not reflect that Coria had filed a proof of claim, the Court overruled Coria’s objection and approved the final report. An order to that effect was entered on August 16, 2011. Thereafter, on September 9, 2011, Coria filed a proof of claim and later filed the instant request to have his claim included in the final distribution of the estate funds.

On August 16, 2011, the Trustee filed her report of distribution. The report

indicates that the Trustee paid priority tax claim and administrative expense claims in full, but did not pay timely filed unsecured claims in full.

### CONCLUSIONS OF LAW

A bankruptcy case is commenced by filing a petition with the clerk of the bankruptcy court. 11 U.S.C. § 301(a); FED. R. BANKR. P. 1002(a). Section 501(a) permits a creditor to file a proof of claim. 11 U.S.C. § 501. Under section 502, a claim is “deemed allowed” in the absence of any objection. *Id.* § 502(a). Additionally, claims filed in a Chapter 7 case are not subject to disallowance simply due to the untimeliness. *See* 11 U.S.C. § 501; § 502(b)(9) (*upon objection*, the court shall disallow a claim if proof of the claim is not timely filed except to the extent tardily filed as permitted under section 726(a)(1), (a)(2), or (a)(3)). In this case, Coria filed a claim and no objections to the claim have been filed. Accordingly, Coria’s claim is deemed allowed.

Although late claims are not subject to disallowance, they are generally not entitled to payment in the second priority along with the timely filed claims. Specifically, under section 726, property of the estate is distributed first to the holders of priority claims, *id.* § 726(a)(1); second to the holders of allowed, general unsecured claims that are either: 1) timely filed by a creditor, or 2) untimely filed by the creditor if the creditor lacked “notice or actual knowledge of the case in time for timely filing” a proof of claim and the creditor actually filed a claim in time to permit payment of the claim, *id.* § 726(a)(2); and

third, to the holders of the remaining late-filed general, unsecured claims. *Id.* § 726(a)(3). Therefore, if a claim is filed after the claims bar date in a Chapter 7 case, it is still entitled to be paid, albeit at a lower priority. As a practical matter, a claim that is entitled to third priority payment will generally receive no distribution.

In this case, a “timely” claim entitled to second priority payment would be one filed by the deadline established by the Clerk’s office in accordance with Rule 2002(e).<sup>1</sup> Here, that claims bar date was December 18, 2007 (hereinafter the “Claims Bar Date”). Coria filed his claim after the Claims Bar Date. Therefore, as filed, Coria’s claim would be entitled to be paid only if all timely filed claims were paid in full, unless he can establish that his claim is entitled to be paid along with the timely filed claims. To establish this, section 726(a)(2) requires a finding that the creditor lacked notice or actual knowledge of the case in time to file a claim. Coria received notice of the bankruptcy case and the claims bar date from the Clerk at the beginning of the case and has also conceded that he had actual knowledge of the bankruptcy case, as he was a business associate and personal friend of the debtor. Therefore, the Court cannot find that Coria’s claim is entitled to be paid as a second priority claim.

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<sup>1</sup> The Court has no discretion or authority to extend the bar date once it has expired. In a Chapter 7 case, the deadline for filing a proof of claim may be extended by the Court “for cause shown” if the request for enlargement is made prior to the expiration of the deadline. FED. R. BANKR. P. 9006(b)(1). Neither excusable neglect nor the Court’s general equitable powers is a basis for extending the claims bar date in a Chapter 7 case when the request for an extension is made after its expiration. *See* FED. R. BANKR. P. 3002(c); FED. R. BANKR. P. 9006(b)(1); *In re Brooks*, 370 B.R. 194 (Bankr. C.D. Ill. 2007); *In re Damiano*, 04-98349-jem (Bankr. N.D. Ga. Dec. 13, 2005) (Massey, J.).

**CONCLUSION**

For the reasons stated above, the Request for Consideration and Inclusion in Final Settlement and Compensation, filed by Moises Coria, dba Moises Coria Drywall is **DENIED.**

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