

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

GEORGE AND DOLORES ROLLAR, §
§
Plaintiffs, §
v. §
§
UNITED STATES OF AMERICA, et al., §
§
Defendants, §
v. §
§
RICHARD VASQUEZ, §
§
Intervener, §

Civil Action No. 3:01 CV 205-McK

**RECEIVER’S RESPONSE TO REQUEST FOR DELAY OF DISTRIBUTION AND
EXTENSION OF TIME FILED BY VALENTINE**

TO THE HONORABLE DAVID KEESLER, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling (“Receiver”) and files his Response to the Request for Delay of Distribution and Extension of Time filed by John Valentine and in support of such would show unto the Court as follows:

1. On February 2, 2007, the Court issued an Order Approving Final Report and Proposed Distribution, which included a provision that the claims submitted by Valentine be disallowed [Dkt. No. 216]. That Order is the equivalent of a “final judgment” by the Court. As this Court is well aware, the general rule is that if a party wishes to stay execution or enforcement of a final judgment, the party must post a supersedeas bond prior to the deadline to take an appeal. *See* Fed. R. Civ. P. 62(d). Therefore, under normal circumstances, Valentine would have to file a supersedeas bond on or before March 5, 2007. Fed. R. App. P. 4(a)(1).

2. Pursuant to Federal Rule of Civil Procedure 62, the amount of the bond may be set within the Court’s discretion. Some districts have a local rule regarding calculation of the

supersedeas bond. For instance, the Northern District of Texas has Local Civil Rule 62.1, which provides that appellants must pay the judgment in full, plus costs and an additional 20% securing “damages for delay.” The Western District of North Carolina does not have an analogous local rule. Instead, case law clearly leaves the amount of the supersedeas bond to the Court’s discretion. *Kirby v. Gen. Elec. Co.*, 210 F.R.D. 180, 195 (W.D.N.C. 2000).

3. In that this is a receivership proceeding, Federal Rule of Civil Procedure 62(a) is also applicable. That rule specifically provides that, “[u]nless otherwise ordered by the court, an interlocutory or final judgment . . . in a receivership action . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.” Thus, in this case, no stay is even possible except in the discretion of the Court.

4. The Receiver is now ready to make the final distribution in accordance with the Court’s Order of February 2, 2007, subject to the request for allowance of legal fees set forth below. Staying the final distribution to rightful claimants holding allowed claims would be inequitable and would, in effect, penalize them for Valentine’s inability to substantiate his claims. Staying distribution during Valentine’s appeal would also delay closure of this case. Accordingly, the Receiver submits that the Court should exercise its discretion and disallow any stay from its Order of February 2, 2007, under Federal Rule of Civil Procedure 62. Alternatively, if there is to be a stay, it should be conditioned upon posting of a supersedeas bond to be determined in the Court’s discretion.

REQUEST FOR ALLOWANCE OF ATTORNEYS FEES

5. In his Final Report, the Receiver did not contemplate an appeal by Valentine and no attorneys fees were allocated. Given the apparent intent of Valentine to lodge an appeal, the Receiver requests that a flat fee of \$15,000.00 to cover legal fees and expenses associated with the

