**NOT FOR PUBLICATION**

# UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

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**BAP NO. MW 03-085**

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**Bankruptcy Case No. 02-44675-JBR**
**Adversary Proceeding No. 02-4326**

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**DANIEL ROSS,**
**Debtor.**

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**DANIEL ROSS,**
**Appellant,**

**v.**

**EDUCATIONAL CREDIT MANAGEMENT CORPORATION,**
**Appellee.**

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**Appeal from the United States Bankruptcy Court**
**for the District of Massachusetts**
**(Hon. Joel B. Rosenthal, U.S. Bankruptcy Judge)**

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**Before**
**Lamoutte, Haines and Kornreich, United States Bankruptcy Appellate Panel Judges.**

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**Daniel Ross, Pro Se,**
**on brief for Appellant.**

**John F. White, Esq., of Topkins & Bevans**
**on brief for Appellee.**

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**June 4, 2004**

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**Per Curiam.**

This matter is before the United States Bankruptcy Appellate Panel for the First Circuit on the debtor's appeal from an October 8, 2003 order of the United States Bankruptcy Court for the District of Massachusetts entering judgment for Educational Credit Management Corporation ("ECMC") regarding the nondischargeability of educational loans under 11 U.S.C. § 523(a)(8). We affirm.

## BACKGROUND

The appellant, Daniel Ross (the "Debtor"), is a thirty-six year old male. He graduated from Worcester State College in 1996 with a Bachelor of Science degree in Natural Science. In early 1997, the Debtor began attending New York Chiropractic College in New York. In late 1997, the Debtor transferred from New York Chiropractic College to Life University in Marietta, Georgia. He attended Life University from 1997 to 2002 concentrating first in the chiropractic program and then in the masters program for sports injury management and exercise physiology. The Debtor's education at New York Chiropractic College and Life University was funded in part by twelve federal student loans that are now held by ECMC. As of September 15, 2003, the combined outstanding balance due on the student loans was $98,252.94.

In 2002, the Debtor quit his course of study at Life University without receiving a degree. The Debtor was last employed in 1994 as a construction worker and has not held a job since that time. Although the Debtor has posted resumes and applied for various positions of employment, he has yet to secure any job.

On July 30, 2002, the Debtor filed a petition for relief under Chapter 7 of the United States Bankruptcy Code.[1] On September 3, 2002, the Debtor filed an adversary complaint seeking to discharge his student loan obligations to ECMC on the basis of "undue hardship" pursuant to § 523(a)(8). The bankruptcy court conducted a trial on September 23, 2003. On October 8, 2003, the bankruptcy court entered an Order On Discharge Of Student Loan Obligations (the "Order") and a separate Memorandum of Decision ("Memorandum") entering judgment for ECMC and determining the student loans owed to ECMC to be nondischargeable. The Debtor, acting pro se, timely appealed that decision.

## JURISDICTION AND STANDARD OF REVIEW

A bankruptcy appellate panel may hear appeals from "final judgments, orders and decrees [pursuant to 28 U.S.C. § 158(a)(1)] or with leave of the court, from interlocutory orders and decrees [pursuant to 28 U.S.C. § 158(a)(3)]." Fleet Data Processing Corp. v. Branch (In re Bank of New England Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998). "A decision is final if it 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" Id. at 646 (citations omitted). Generally, a bankruptcy court's order determining the dischargeability of a debtor's student loan obligations is such a final order. See id. at 646-47; see generally T I Fed. Credit Union v. DelBonis, 72 F.3d 921 (B.A.P. 1st Cir. 1995).

The Panel evaluates the bankruptcy court's findings of fact pursuant to the "clearly erroneous" standard of review and its conclusions of law *de novo*. Grella v. Salem Five Cent Savings Bank, 42 F.3d 26, 30 (1st Cir. 1994); see also Fed. R. Bankr. P. 8013; Palmacci v.

[1] Unless otherwise indicated, all references to the "Bankruptcy Code" and all references to statutory sections are to the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. §§ 101, et seq.

Umpierrez, 121 F.3d 781, 785 (1st Cir. 1997). Generally, appellate courts review under the clearly erroneous standard a bankruptcy court's resolution of any factual disputes that are relevant to the test of whether a debtor's student loans are dischargeable under § 523(a)(8), although they must then review *de novo* the bankruptcy court's ultimate conclusion as to whether the debtor demonstrated undue hardship.

## DISCUSSION

### A. Nondischargeability Under § 523(a)(8)

Under § 523(a)(8),[2] debtors are not permitted to discharge educational loans unless excepting the loans from discharge will impose an undue hardship on the debtor and the debtor's dependants. In a § 523(a)(8) action, the creditor bears the initial burden of proving the debt exists and that the debt is of the type excepted from discharge under § 523(a)(8). See Bloch v. Windham Prof'ls (In re Bloch), 257 B.R. 374, 377 (Bankr. D. Mass. 2001) (citations omitted). Once the creditor makes this threshold showing, the burden shifts to the debtor to prove by a preponderance of the evidence that excepting the student loan debt from discharge will cause the

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[2] Section 523(a)(8) provides:

> (a) A discharge under section 727, 1141, 1228(a), or 1328(b) of this title does not discharge an individual debtor from any debt -
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> > (8) for an educational benefit, overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend unless excepting such debt from discharge under this paragraph will imposed an undue hardship on the debtor and the debtor's dependents.

11 U.S.C. § 523(a)(8).

debtor and the debtor's dependants "undue hardship." See id.; see also Grogan v. Garner, 498 U.S. 279, 287 (1991) (employing a preponderance of the evidence standard for dischargeability complaints). Generally, the hardship alleged must be attributable to truly exceptional circumstances, such as illness or the existence of an unusually large number of dependents. See DelBonis, 72 F.3d at 927 (citations omitted).

In its Memorandum, the bankruptcy court concluded that the Debtor did not meet his burden of proving by a preponderance of the evidence that repaying his student loans would cause him and his dependants "undue hardship" as required by § 523(a)(8). The Debtor appealed that decision.

**B. Appellant's Burden on Appeal**

On appeal, the burden is on the appellant to prove that the bankruptcy court's judgment should be reversed. See Espiefs v. Settle, 14 B.R. 280 (D.N.H. 1981); see also In re Cook, 72 B.R. 976 (W.D. Mo. 1987). An appellant bears the heavy burden of showing that evidentiary rulings were manifestly erroneous, and, even then, reversal is warranted only where affirmance would be inconsistent with substantial justice. See Nora Beverages, Inc. v. The Perrier Group of Am., 269 F.3d 114 (2d Cir. 2001).

On February 3, 2004, the Debtor filed a one-page document entitled "Reasons for the Appeal" intended to be his brief. However, by order of this Panel dated March 18, 2004, the first paragraph of the Debtor's brief was stricken and the Debtor's requests for a new trial and change of venue contained in the second paragraph were denied. With what remains of the Debtor's one-page brief, it is impossible to determine what issue(s) the Debtor seeks to appeal. The

Debtor's brief does not advance any arguments about the bankruptcy court's ruling and, therefore, presents no question for us to decide.

As a threshold matter, we are compelled to point out that there are serious deficiencies with the Debtor's brief. The Debtor has utterly failed to comply with Bankruptcy Rule 8010, which provides that an appellate brief shall contain, *inter alia*, a table of contents, a statement of the basis of appellate jurisdiction, a statement of issues presented, the applicable standard of appellate review, a statement of the case, and an argument containing the contentions of the appellant with essential citations to the authorities, statutes and parts of the record relied on. Fed. R. Bankr. P. 8010(a)(1)(A)-(E). The Debtor's brief fails to contain any of these sections, consisting instead of a series of short statements regarding interest rates and the Debtor's alleged inability to obtain employment. In fact, the Debtor's brief fails to raise any arguments whatsoever about the bankruptcy court's ruling.

An appellate court may, in its discretion, deem an argument waived if it is not presented in accordance with Bankruptcy Rule 8010. See Brewer v. Erwin & Erwin, P.C. (In re Marquam Inv. Corp.), 942 F.2d 1462, 1467 (9th Cir. 1991) (failure to comply with Bankruptcy Rule 8010 waives issue on appeal); Joelson v. Brown (In re Brown Family Farms, Inc.), 872 F.2d 139, 142 (6th Cir. 1989) (same). In addition, some courts have concluded that failure to comply with Bankruptcy Rule 8010 may be grounds for dismissing a bankruptcy appeal. See, e.g., In re Gulph Woods Corp., 189 B.R. 320, 323 (E.D. Pa. 1995); see also In re Rauso, 212 B.R. 242 (E.D. Pa. 1997); Suncoast Airlines, Inc. v. Atkinson & Mullen Travel, Inc. (In re Suncoast Airlines, Inc.), 188 B.R. 56, 58 (S.D. Fla. 1994); Peterson v. Akrabawi (In re Stotler & Co.), 166 B.R. 114, 116-17 (N.D. Ill. 1994); A. Marcus, Inc. v. Farrow, 94 B.R. 513, 515 (N.D. Ill. 1989).

Pleadings filed pro se are often construed liberally, and courts are not ordinarily inclined to dismiss an appeal on what would appear to be the technical ground that it fails to conform to the rules for presenting briefs on appeal. However, Bankruptcy Rule 8010 "is not only a technical or aesthetic provision, but also has a substantive function--that of providing the other parties and the court with some indication of which flaws in the appealed order or decision motivate the appeal." See Gulph Woods Corp., 189 B.R. at 323; see also Interface Group-Nevada v. Trans World Airlines, Inc. (In re Trans World Airlines, Inc., 145 F.3d 124 (3d Cir. 1998) (noting that Bankruptcy Rule 8010 is designed to assure that appellate courts are fully advised of the appealing party's contentions). "Appellate rules governing the form of briefs do not exist merely to serve the whimsy of appellate judges. Some of the requirements . . . are essential for the proper disposition of an appeal." Slack v. St. Louis County Gov't, 919 F.2d 98, 99 (8th Cir. 1990). A court cannot decide a case in the absence of some indication of what are the substantive legal claims raised by an appellant.

The Debtor's failure to comply with the rules of briefing and presenting a record on appeal, including his failure to raise any meaningful arguments or substantive legal claims, preclude us from reviewing the bankruptcy court's order. It is not the duty of this Panel to develop the Debtor's arguments for him, find the legal authority to support those arguments, or guess at what part of the record may be relevant. See Morrissey v. Stuteville (In re Morrissey), 349 F.3d 1187, 1189 (9th Cir. 2003). At the very least, the Debtor had to demonstrate a reasonable basis for reversing the trial court and entering judgment in its favor. Because he has not, we simply cannot conclude that the bankruptcy court's findings were erroneous. Accordingly, we summarily affirm the bankruptcy court's order.