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3 JUDGE HERB ROSS (Recalled)

4 UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA  
5 605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: www.akb.uscourts.gov)  
6 Clerk's Office: 907-271-2655 (1-800-859-8059 In-State) — Judge's Fax: 907-271-2692  
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8 In re

9 GUY CHRIS MANNINO,

10 Debtor(s)  
11  
12

Case No. F11-00859-HAR  
In Chapter 7

MEMORANDUM DECISION TO DEFER  
RULING ON TIMELINESS STATUS OF  
PROOF OF CLAIM NO. 8 [Meghan  
Johnson]

13 Meghan Johnson filed *pro se* a *Motion to accept late filed claim*.<sup>1</sup> She filed, at about the  
14 same time, Proof of Claim No. 8 for \$2,500 as a consumer deposit claim with priority under 11  
15 USC § 507(a)(7). She alleges no notice of the bankruptcy until September 14, 2012.

16 What Ms. Johnson really seeks is to have her proof of claim deemed to be *timely*. She  
17 needs no permission to file the proof of claim, *per se*. If it is untimely, however, it will be  
18 subordinated to timely claims when the trustee distributes dividends.<sup>2</sup>

19 The motion has not been noticed to the trustee and other creditors. It would be better,  
20 procedurally, to defer ruling until the trustee makes a report and seeks permission for a  
21 distribution. If the trustee objects to Ms. Johnson's claim as being untimely, a hearing can be held  
22 at that time. It may be that no objection will actually be necessary, depending on how much the  
23 trustee recovers and the status of other claims filed at the time of his final report.

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25 <sup>1</sup> Docket No. 40, filed September 25, 2012.

26 <sup>2</sup> 11 USC § 726(a)(2)(C).  
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1 There is only one claim filed with a higher priority. Proof of Claim No. 1 by the IRS  
2 claims a higher priority of just \$618.47 of its total claim. There are other unsecured claims, but it  
3 cannot be said at this time whether there will even be an issue paying a late filed claim a 100%  
4 dividend.

5 On the substantive issue, whether a bankruptcy court can expand the time to file a late  
6 claim for a creditor with no notice of the claims bar date (April 19, 2012 in this case), the cases are  
7 not uniform. Judge MacDonald held in a claims objection hearing in In re Harp that he did not  
8 have such authority.<sup>3</sup> The rationale used for his ruling has been also been used in a decision by an  
9 Idaho bankruptcy court.<sup>4</sup>

10 On constitutional grounds, however, the district court in the Central District of California,  
11 in In re Barsky, held that a creditor who was not given adequate notice of the claims bar date was  
12 not precluded from filing a late claim which could be deemed timely.<sup>5</sup> In In re Coastal Alaska  
13 Lines, Inc. the 9<sup>th</sup> Circuit criticized the “lack of due process” reasoning of In re Barsky, but the  
14 facts before it did not present the same factual framework relied upon by the Barsky court in its  
15 due process ruling, so it did not overrule Barsky.<sup>6</sup>

16 This conflict can be addressed, if necessary, at the time of any objection to Proof of Claim  
17 No. 8 on timeliness grounds.

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22 <sup>3</sup> A copy of Judge MacDonald’s decision is attached. A10-00021-DMD, In re Steve W. Harp and Teresa  
E. Harp, Docket No. 93, filed December 7, 2011, discussing FRBP 3002(c) and FRBP 9006(b)(3).

23 <sup>4</sup> In re Moniz, 2007 WL 2225926 (Bankr.D. Ida. 2007).

24 <sup>5</sup> In re Barsky, 85 B.R. 550, 553 (C.D. Cal. 1988), *aff’d*, 933 F.2d 1013 (9<sup>th</sup> Cir. 1989) (the unpublished  
25 decision of the circuit did rule on the constitutional issue).

26 <sup>6</sup> In re Coastal Alaska Lines, Inc., 926 F.2d 1428, 1430-31 (9<sup>th</sup> Cir. 1990).

1 DATED: September 27, 2012

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3  
4 /s/ Herb Ross  
5 HERB ROSS  
6 U.S. Bankruptcy Judge

7 Serve:

8 Meghan Johnson, *pro se* POC # 8 claimant, 201 Hamilton Ave., Unit #20, Fairbanks, AK 99701  
9 Larry Compton, trustee  
10 James DeWitt, Esq., attorney for the trustee  
11 U.S. Trustee's Office - Anchorage  
12 Case Manager  
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27 MEMORANDUM DECISION TO DEFER  
28 RULING ON TIMELINESS STATUS OF  
PROOF OF CLAIM NO. 8 [Meghan Johnson]

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ALASKA**

In re:

STEVE W. HARP and  
TERESA E. HARP,

Debtors.

Case No. A10-00021-DMD  
Chapter 13

Filed On  
12/7/11

**ORDER ON TRUSTEE'S OBJECTIONS TO CLAIMS  
AND ON THE DEBTOR'S MOTION TO ALLOW LATE FILED CLAIMS**

A hearing on the trustee's objections Claim Nos. 17, 18, 19, 20, and 21, all filed by Valley Collections, Inc., and the debtor's motion to allow these late filed claims was held before the undersigned on December 6, 2011. Larry Compton, chapter 13 trustee, appeared on his own behalf. Louis Breuer appeared by telephone on behalf of the debtors, and debtor Steve Harp also was present by telephone. Kathy Simpson appeared by telephone for Valley Collections, Inc. For the reasons stated in this court's Memorandum on Debtor's Motion to Allow Late Filed Claims, dated December 7, 2011,

**IT IS ORDERED:**

- 1) The trustee's claim objections are sustained. Claim Nos. 17, 18, 19, 20, and 21, filed by Valley Collections, Inc., are disallowed, in full.
- 2) The debtor's motion to allow late filed claims is denied.

DATED: December 7, 2011.

BY THE COURT

/s/ Donald MacDonald IV  
DONALD MacDONALD IV  
United States Bankruptcy Judge

Serve: L. Breuer, Esq.  
Valley Collections, Inc., Attn: K. Simpson, P. O. Box 870670, Wasilla, AK 99687-0670  
L. Compton, Trustee  
U. S. Trustee  
Claims Register  
12/7/11