UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

GARY N. DEUSNER — PLAINTIFF

v. — CIVIL ACTION NO. 3:00CV-615-S

FIRSTAR CORPORATION and
FIRSTAR BANK, NATIONAL ASSOCIATION — DEFENDANTS

MEMORANDUM OPINION

This matter is before the Court on the Plaintiff's motion to reconsider our order dismissing his complaint for failure to state a claim upon which relief can be granted. He also moves us to toll the time period for filing his notice of appeal with the Sixth Circuit Court of Appeals. On July 26, 2001, we entered an order granting the Defendants' motions to dismiss. On August 16, the Plaintiffs filed this motion. For the reasons described below, we will deny this motion by a separate order entered this day.

DISCUSSION

A motion to reconsider a final and appealable order of this Court is properly viewed as a motion to alter or amend a judgment. Fed.R.Civ.P. 59(e); *Smith v. Hudson*, 600 F.2d 60, 62 (6th Cir. 1979). Rule 59(e) requires any such motion to be filed within ten days of the entry of the judgment, or in this case, our order of dismissal. This time period lapsed on August 9, one week before the motion was filed. We do not have discretion to increase this period of time, and certainly cannot do so after it has expired. *FHC Equities, L.L.C. v. MBL Life Assur. Corp.*, 188 F.3d 678, 682 (6th Cir. 1999)(*quoting Derrington-Bey v. District of Columbia Dept. of Corrections*, 39 F.3d 1224, 1225 (D.C. Cir. 1994)). Therefore, we do not possess jurisdiction to consider the Plaintiff's motion.

Even were we to consider it, we would still deny the Plaintiff's motion for several reasons.

First, we rejected the Plaintiff's citation to 12 C.F.R. §213.4(q) on stronger grounds than the Plaintiff indicates. While we called upon the maxim *expressio unius est exclusio alterius* in our opinion, we also relied upon other well-established canons of construction and the great weight of legislative history in concluding that Congress had already spoken on the issue of whether 15 U.S.C. §1667b(b) regulates the amount of penalties for late payments under lease agreements. Our citation to *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.9, 104 S.Ct. 2778, 2782, 81 L.Ed.2d 694 (1984), did not misconstrue the holding of that case or take its language out of context. Using traditional tools of statutory construction, we determined that Congress had spoken on the issue at hand.

Also, we did not rule §213.4(q) invalid, but only noted its inapplicability to the present issue. We are aware of the wide latitude Congress delgated to the Board of Governors of the Federal Reserve System (the "Board") to effectuate the Consumer Leasing Act, 15 U.S.C. §1667 *et seq.*, ("CLA"). However, as we only subtly noted, it is not clear that §213.4(q) represents the Board's attempt to interpret §1667b(b). As is detailed in the Defendants' brief, the Board had never, before the amendment of §213.4(q) in 1996, indicated that penalties for late payments must be reasonable and has not, since its adoption, made any similar pronouncement in any of the other sections that deal directly with §1667b(b). Further, when the Board added this language to §213.4(q), it explained that it only intended to "reflect" the language in §1667b(b) and did not intend to make any "substantive change" to the regulation. However, the Plaintiff's argument rests upon a finding that this amendment interpreted the meaning of the phrase "delinquency, default, or early termination" in §1667b(b) and was intended to make a substantive change to the Board's well-established history of requiring only that penalties for late payments be disclosed. Thus, there is much more ambiguity

in the Plaintiff's reading of the regulation than there is in the language of the statute.

The other issues raised by the Plaintiff have already been addressed in our original opinion. Those sections of the brief evidence his disagreement with our opinion and his attempt to reorganize and refocus his legal analysis. In such a case, we should not consider the motion and should permit the appellate process to run its course. *Plaskon Electronic Materials v. Allied-Signal*, 904 F.Supp. 644, 669 (N.D.Ohio 1995).

CONCLUSION

The Plaintiff's motion to reconsider is untimely and not well taken. We will deny it by a separate order entered this date.

This _____ day of _____, 2001.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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ORDER

For the reasons set forth in the memorandum opinion entered this date and the Court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the Plaintiff's motion to reconsider and to toll the time for appeal is **DENIED**.

IT IS SO ORDERED this _____ day of _____, 2001.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record