

Bankruptcy Court Dismisses Cannabis Company Employee's Chapter 13 Case

Article By:

Kyle F. Arendsen

Last month, the United States Bankruptcy Court for the District of Massachusetts [denied confirmation](#) of a cannabis company employee's Chapter 13 plan and dismissed his bankruptcy case. The employee, Scott H. Blumsack (the "Debtor"), is a general manager who is licensed in Massachusetts to work for Society Cannabis Co., a Massachusetts-licensed retailer, wholesaler, and producer of cannabis products. In his role, the Debtor oversees 16 full-time employees and directly serves cannabis products to customers. The Debtor earns \$75,000 annually but owns no equity in Society Cannabis and is not entitled to any profit-sharing opportunities.

Although Massachusetts law permits the retail distribution of marijuana, marijuana is a Schedule I controlled substance under the US Controlled Substances Act of 1970 (the "CSA"). Since marijuana is a controlled substance, it is a crime under the CSA to either (1) manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, marijuana, or (2) aid and abet violations of the CSA. In short, there is a direct conflict between Massachusetts law (cannabis is legal) and the CSA (cannabis is illegal).

Despite the Debtor being a "mere employee" for a licensed business operating legally in Massachusetts, the bankruptcy court dismissed the Debtor's case. The bankruptcy court held that the Debtor objectively lacked good faith and that it would be an abuse of process to confirm the Debtor's Chapter 13 plan.

The Debtor's Objective Lack of Good Faith

In finding a lack of good faith, the bankruptcy court cited to five separate federal statutes criminalizing various activities surrounding controlled substances. The court found that the Debtor violated all five of these statutes through his work with Society Cannabis, notwithstanding that Society Cannabis was operating legally under Massachusetts law.

The bankruptcy court further found that the Debtor did not demonstrate good faith by proposing his Chapter 13 plan because he intended to continue to engage in and benefit from activities that violate federal criminal law. Interestingly, the court still found bad faith even when the Debtor proposed to fund his Chapter 13 plan with funds that his wife withdrew from her retirement account, citing to the

Debtor's stated intent to continue working in the cannabis industry (*i.e.*, a continuing violation of federal law). As a result, the court held that the Debtor could not satisfy the good faith requirement under sections 1325(a)(3) and (a)(7) of the Bankruptcy Code and found "cause" for dismissal under section 1307(c)(5) of the Bankruptcy Code.

Abuse of Process

In addition to finding a lack of good faith, the bankruptcy court separately noted that the Debtor's case must be dismissed for abuse of process under section 105 of the Bankruptcy Code. The Debtor did not intend to quit his job, or as the court put it "forego his federal criminal activities while this case is pending." Therefore, the court held that it would be an abuse of process for the Debtor to commit federal crimes while at the same time being permitted to avail himself of the protections and benefits of the federal bankruptcy laws.

Takeaways

The *Blumsack* decision is both disheartening and frustrating. On the one hand, the court appears to be restricted by the CSA defining cannabis as a Schedule I controlled substance, thus making any individual or business associated with cannabis potentially ineligible from obtaining bankruptcy protection. But such a narrow approach leads to harsh results. Cannabis is legal in Massachusetts and the Debtor was licensed by the state to perform his job. During the evidentiary hearing, the Debtor also pointed out how cannabis is a large industry in Massachusetts that utilizes various national businesses and contractors. Why should an employee of a cannabis company be barred from seeking bankruptcy protection but a contractor (such as janitorial staff that cleans for a cannabis company), an employee for a large retailer (that offers marijuana products along with thousands of other goods), or a mailing service (that ships marijuana products along with mailings for all other businesses) be authorized to utilize the bankruptcy laws?

The court acknowledged this gray area and limited the holding to "*this* Debtor's Chapter 13 plan and dismissal of *this* Debtor's case." But the issue remains—marijuana products are legally available for purchase across the country and over time more and more individuals will begin to have some connection with the marijuana industry. For example, applying the reasoning in *Blumsack*, it is possible that a lawyer who earns a living representing cannabis companies could be prohibited from personally filing for bankruptcy protection unless s/he agreed to stop representing such companies. Such a result could be seen as untethered to today's reality. However, as long as the CSA lists marijuana as a Schedule I controlled substance, the harsh result of the *Blumsack* case may unfortunately become more prevalent.

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