A Crack in the Courthouse Doors for Marijuana Related Businesses and the Availability of Bankruptcy Protection

Cannabis Business Legal News

on May 7, 2018

A recent decision from the Bankruptcy Appellate Panel of the Ninth Circuit is another in a small, but growing line of cases finding that bankruptcy cases need not be mandatorily dismissed simply because they touch upon marijuana related businesses or their assets. In turn, that realization could, and should, lead to a much needed change in thought over the general availability of bankruptcy protection for operating marijuana related businesses themselves.

The decision, *In re Olson*, 2018 WL 989263 (B.A.P. 9th Cir. 2018), involved a 92 year old, legally blind, debtor living in an assisted living facility. The debtor, Ms. Olson, owned a commercial property which leased space to a marijuana dispensary, which was by all accounts operating legally under California law. After Ms. Olson filed for Chapter 13 bankruptcy protection, the marijuana dispensary continued to pay rent to Ms. Olson as its landlord. Ms. Olson's proposed Chapter 13 plan called for a termination of the lease with the dispensary and a sale of the commercial property with all proceeds to be used to pay Ms. Olson's creditors. However, before a hearing could be held on Ms. Olson's Chapter 13 plan and the commercial property liquidated to pay creditors, the court, on its own, dismissed Ms. Olson's bankruptcy case because it found that Ms. Olson had committed "a crime" by "accepting rents from an illegal operation." The Bankruptcy Court also concluded that dismissal was appropriate because Ms. Olson was "leasing property for an unlawful purpose under federal law, although lawful under state law."

On appeal, the Bankruptcy Appellate Panel, in a logical (but unfortunately novel) approach to the issue, refused to support the automatic dismissal of Ms. Olson's bankruptcy case simply because of her tangential ties to a marijuana related business, and the limited income she had derived therefrom during the pendency of her bankruptcy case. Perhaps more importantly, the Bankruptcy Appellate Panel found that it was actually an abuse of the Bankruptcy Court's discretion to dismiss Ms. Olson's case without providing explicit legal justification for the dismissal. The Bankruptcy Appellate Panel noted that "[w]hen a court

imposes the harsh penalty of dismissal in circumstances such as those presented here, it is imperative that it state with clarity and precision its factual and legal bases for doing so." In a well-reasoned concurrence opinion, one judge recognized the legal significance of addressing the legal needs of litigants who are otherwise in compliance with state laws, when over twenty-five states currently allow the medical or recreational use of marijuana.

The decision *In re Olson* is nowhere near a panacea for all of the insolvency issues facing marijuana related business and those who interact with them, but it is another much needed step in the right direction. The Bankruptcy Appellate Panel took a realistic, logical approach to an issue confronting all parties involved in this space, and concluded that the mere presence of a marijuana related business, or a marijuana related asset, should not preclude bankruptcy protection in the right situation. Again, the *Olson* decision does not open the courthouse doors to the bankruptcy option for marijuana related businesses, but it does stand for the proposition that bankruptcy courts can use a common sense approach in deciding these issues, as opposed to automatically dismissing bankruptcy cases with any connection whatsoever to a marijuana related business or its assets.