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Cannabis Co. Seeks Default Win Against Bank Firm In Tax Suit

By Anna Scott Farrell

Law360 (September 26, 2022, 1:34 PM EDT) -- A cannabis company accusing a banking firm of failing to pay millions in state taxes on its behalf asked a California federal judge for sanctions and a default judgment, saying the CEO lied during a deposition and submitted falsified documents.

Pacific Banking Corp. CEO Justin Costello gave evasive testimony, flouted four court discovery orders, pretended he didn't remember key transactions in the case, and submitted a doctored financial statement to the court, Cann Distributors Inc. **told the court** Friday in its request for sanctions.

"While less severe sanctions theoretically exist, given defendants' perjury and abuse of process, anything less than terminating sanctions is woefully inadequate," said Cann and the related California company bringing the suit, CCSAC Inc.

Cann sued Pacific in March 2020, accusing it of failing to make more than \$2 million in tax payments to the state of California on its behalf, as well as failing to pay vendor invoices. A month later, the company secured an order blocking Pacific from touching the roughly \$2.8 million Cann said it had deposited with the marijuana-friendly financial institution, a middleman between cannabis companies and traditional banks. The unpaid taxes have racked up \$2 million in state penalties, Cann said in its Friday filing.

Cann's request to terminate Pacific's defense, giving the cannabis company an automatic win, comes after U.S. District Judge James Donato of the Northern District of California **threatened** the banking firm with sanctions and blamed it for multiple rounds of discovery disputes, according to a transcript of court proceedings from earlier this month.

Cann's request for sanctions accuses Costello of claiming during his deposition by Cann's lawyers that he didn't know whether the banking firm had made the tax payments on Cann's behalf, and then changing his story just two months later in the bank's request for summary judgment in the case. Costello's new testimony claimed he attempted to make the tax payments, but they were returned, Cann said. Costello also said he didn't make the payments because Cann had breached its contract, Cann said.

Costello also gave evasive testimony about the location of Cann's funds and refused to answer questions about whether he had transferred the funds while the case was pending, Cann said.

Further, Costello filed an affidavit with the court that included doctored account summaries made to look like financial institution account records, Cann said.

Ample case history exists to support dismissal sanctions when a party acts in bad faith and fails to comply with the rules of discovery or court orders enforcing those rules, Cann said.

"This dispute is not about an isolated, incomplete response to a written discovery request but rather a consistent pattern of willful disregard for this court's orders and the discovery process in general," Cann said.

Steven Michael Selna of Selna Partners LLP, an attorney for Cann, told Law360 that Pacific's CEO had misled the court and failed to honor their discovery obligations.

"We think there's significant prejudice to our client and to the process in general if parties can engage in these kinds of deceptive practices in response to court orders and in response to discovery requests, and a monetary sanction is not adequate to address that behavior," Selna said.

Counsel for Pacific did not immediately respond to a request for comment. Costello could not be reached for comment.

Cann Distributors Inc. is represented by Steven Michael Selna and Robert William Selna of Selna Partners LLP.

Pacific Banking Corp. and the other defendants are represented by Stephen M. Lobbin of SML Avvocati PC.

The case is CCSAC Inc. et al. v. Pacific Banking Corp. et al., case number 3:20-cv-02102, in the U.S. District Court for the Northern District of California.

--Additional reporting by Jonathan Capriel. Editing by Khalid Adad.

Correction: A previous version of this article incorrectly described Cann's business. The error has been corrected.

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