

GenCanna Misled Investors Before Bankruptcy, Ex-CFO Says

By **Diana Novak Jones**

Law360 (June 12, 2020, 6:56 PM EDT) -- The former chief financial officer of bankrupt hemp company GenCanna is claiming the company's accounting could have inflated assets and misled potential investors, and that he was fired after reporting it to company leadership, according to court filings.

Mark Stegeman claims he was fired by GenCanna in December after he gave the company's general counsel and executive vice president a memo detailing what he believed to be "inaccurate, misleading and even fraudulent" accounting of sales, according to documents filed in GenCanna's bankruptcy case on Thursday.

"Mr. Stegeman saw that the debtors' misleading accounting practices were causing their assets to look more valuable than they actually were, all during a time [when] the debtors were in the midst of the first audit of their financial statements and at a time when the debtors were seeking private investors, a potential sale to a publicly traded company, or a possible initial public offering," he wrote in the filing.

Stegeman filed a complaint against GenCanna with the U.S. Department of Labor over his firing, and not long afterward, he was contacted by a federal investigator, he says. The investigator requested more information, which Stegeman provided, according to the documents. It is unclear what agency the investigator was from.

Stegeman says that the Department of Labor initially dismissed his complaint, but has assigned it to a district office for a new hearing.

Through an attorney, GenCanna noted the department's dismissal of Stegeman's complaint and said it continues to deny the allegations. The company has said in its bankruptcy filings that it investigated its CFO's claims of fraudulent activity but "determined them to be unfounded."

"The allegations were likely nothing more than 'sour grapes' on the part of the departing CFO," the company said.

Counsel for Stegeman did not respond to requests for comment Friday. Neither did representatives for the Department of Labor.

Stegeman's allegations came to light in a motion he filed requesting that his Department of Labor case be allowed to proceed despite GenCanna's bankruptcy. The CBD company entered bankruptcy in February, a month after one of its creditors filed an involuntary Chapter 11 petition.

At the end of May, U.S. Bankruptcy Judge Gregory Schaaf approved GenCanna's plan to sell all of its inventory, intellectual property and licenses to an investment group for \$77 million.

But the case is still ongoing, with the rest of the creditors left to argue over the company's remaining assets. The U.S. Trustee's Office has also filed a motion to convert the bankruptcy to a Chapter 7, saying the company's failure to keep up its insurance on one of its remaining buildings warrants the move.

Stegeman, who was hired as the company's CFO in August, claims the company owes him \$1.5 million in severance after his firing in December. He filed a proof of claim as part of the bankruptcy, according to court records.

He says the problems with GenCanna began in November when he noticed some "accounting irregularities" at the company.

He and his staff conducted an investigation of the company's sales transactions and found that the company's assets were being inflated in a way that could be misleading to investors. He detailed the findings in a memo he gave to company leadership, he says.

In December, Stegeman got a letter from the company saying they understood his memo to mean he was resigning without cause. He had packed up his office before he sent the memo and was clearly intending to resign, so rather than firing him, GenCanna said they would interpret his leaving as a voluntary resignation, according to the letter.

Stegeman claims he had no intention of resigning by sending the memo, and he asked the company to settle with him over his severance package. GenCanna did not respond, Stegeman says.

In January, he filed a whistleblower complaint under the Sarbanes-Oxley Act against the company with the Department of Labor, a complaint with the Kentucky Labor Cabinet Division of Wages and Hours and a demand for arbitration, according to court records.

The Department of Labor dismissed Stegeman's complaint in March after concluding that GenCanna is not a publicly traded company or a subsidiary or affiliate of one, as required to access the Sarbanes-Oxley Act's whistleblower protections. Stegeman objected, telling the department that GenCanna is affiliated with publicly-traded cannabis company MariMed.

On June 5, Stegeman said he was told the case had been assigned to one of the department's district offices, where it could be heard anew. His Department of Labor case is still ongoing, according to case records.

Stegeman is represented by John O. Sheller and Matthew R. Lindblom of Stoll Keenon Ogden PLLC.

GenCanna is represented by James R. Irving, April A. Wimberg and Christopher B. Madden of Dentons Bingham Greenebaum LLP and Michael J. Barrie, Jennifer R. Hoover and Elliot M. Smith of Benesch Friedlander Coplan & Aronoff.

The case is In re: GenCanna Global USA Inc., case number 20-50133, in the U.S. Bankruptcy Court for the Eastern District of Kentucky.

--Editing by Steven Edelstone.

Update: This story has been updated to clarify certain claims made in the whistleblower's complaint.