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Appellate Court Upholds Private Employer's Right to Deny Employment to A Person Who Has Filed Federal Bankruptcy

[24837]

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TO: COMPLIANCE MEMBERS No. 2-11
INTERNAL AUDIT ADVISORY COMMITTEE No. 1-11
OPERATIONS MEMBERS No. 1-11 RE: APPELLATE COURT UPHOLDS PRIVATE EMPLOYER'S RIGHT TO DENY EMPLOYMENT TO A PERSON WHO HAS FILED FEDERAL BANKRUPTCY

The United States Court of Appeals for the Third Circuit recently held that the Federal Bankruptcy Code does not prohibit a private employer from denying employment to a job applicant on the basis of the applicant's bankruptcy. [1] The facts of this case and the court's ruling are briefly discussed below.

The Facts

According to the court, the Plaintiff in the case filed for bankruptcy in 2002 and his debts were discharged in 2003. In 2009, he applied for employment with a financial services firm. While it appeared after his interview that he was going to be hired, the potential employer refused to hire him because of his bankruptcy. He sued the potential employer arguing that Section 525 of the Bankruptcy Code (the "Code") prohibits discrimination against an individual solely because the individual has been a debtor or bankrupt.

Subsection 525(a) of the Code provides in relevant part that a "government unit" may not "deny employment to, terminate the employment of, or discriminate with respect to employment against a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act . . . solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act . . .." (Emphasis added.) By contrast, Subsection 525(b) of the Code provides that no "private

employer may terminate the employment of, or discriminate with respect to employment against" an individual who is a debtor or bankrupt. (Emphasis added.)

In bringing suit, the Plaintiff argued that the prohibition in Subsection 525(b) relating to "discrimination with respect to employment" is broad enough to include discrimination in the denial of employment and that failure to expressly include denial of employment in this provision was a scrivener's error. The lower court found no merit it the Plaintiff's argument and therefore "declined to impose the prohibition set forth in section 525(a) upon section 525(b), because Congress clearly opted to exclude it."

The Court's Holding

On appeal, the Circuit Court affirmed the District Court's judgment. Contrary to the Plaintiff's argument, the court did not attribute the omission of "to deny employment" in subsection 525(b) "to a scrivener who was more verbose in writing §525(a)." Instead, the court relied on a decision of the U.S. Supreme Court holding that "where Congress included particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusive or exclusion." As stated by the court,

> We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship. We will not contravene congressional intent by implying statutory language that Congress omitted. Nor will we interpret statutory language in a way that would render any part thereof superfluous. The District Court properly declined [the Plaintiff's] request to read the phrase 'discrimination with respect to employment' in §525(b) as broad enough to encompass discrimination in the denial of employment. Congress did not so provide. Neither will we.

The court's decision is available at: http://caselaw.findlaw.com/us-3rd-circuit/1548259.html.

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endnotes

[1]See Rea v. Federated Investors No. 10-1440 (3rd Cir. Dec. 15 2010).