

What happens if I conceal an asset in a bankruptcy filing?

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Answer: really bad ramifications, and now there is one more added to the mix.

A federal appeals court has just issued a ruling that the law allows an additional remedy against bankruptcy debtors that conceal assets. This case is important because it establishes the law for Massachusetts and adds another really bad possible ramification for a debtor that is dishonest. The United States Court of Appeals for the First Circuit, with former Supreme Court Justice Souter sitting under designation authoring the opinion, just affirmed a ruling by a bankruptcy judge in Boston, Massachusetts that took the step of ordering a “surcharge” against a Debtor who concealed funds he received from a real estate transaction. The case is styled as *Malley v. Agin (In re Agin)*, 2012 WL 3326629 (1st Cir., Aug 15, 2012) and a brief summary of the facts from the opinion are the following.

Mr. Malley and his ex-wife sold their marital home in accordance with divorce agreement. Mr. Malley personally received \$25K as his share from the sale. He then filed for bankruptcy and did not reveal his receipt of the \$25K on his bankruptcy paperwork. When asked about the transaction by the trustee assigned to his case, he repeatedly claimed under oath that he never received any funds from the transaction. Due to this and some other reasons, the trustee investigate more and then learned about the \$25K that went to Mr. Malley.

The trustee sought sanctions against Mr. Malley and the bankruptcy court denied Mr. Malley a discharge of his debts because of Mr. Malley’s false representations. The court also ordered Mr. Malley to turnover the \$25K, but he did not and did not explain where the funds went. The bankruptcy court also ordered, and this is what is important from the case, that the \$25K that was unaccounted for, plus the cost to unravel the issue would be held against one of Mr. Malley’s exempt assets, a truck that he used in his business. You see, the general rule is in bankruptcy that debtors are entitled to keep exempt assets to ensure their fresh start and only have to turn over assets that are not exempt under the law. But this decision delved into that area to ensure the \$25K plus was accounted for.

Although the portion of the case concerning the exempt property may be appealed to the US Supreme Court, as matters stand now, the case did not turn out well for Mr. Malley. He will not get out of his debts, he will have to give up his only significant asset, and (if authorities believe he intentionally stated falsehoods under oath) the case may get the attention of the US Dept. of Justice for criminal prosecution. The moral of the story is to disclose all of your assets in your bankruptcy.

If you are contemplating bankruptcy and plan to heed the moral of this story, then we encourage and invite you to contact this office.

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bankruptcy denial of discharge under 727/ letter for turnover of property in someone else's bankruptcy/requirement of disclosure of assets in bankruptcy