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Cannabis Firm Using Crisis To Hide Shortfall, Investors Say

By **Dean Seal**

Law360 (April 16, 2020, 6:49 PM EDT) -- Investors in iAnthus Capital Holdings Inc. claim the publicly traded cannabis company is trying to use the coronavirus pandemic to explain away a missed $4.4 million interest payment.

In a putative class action filed Wednesday, iAnthus investors told a New York federal court that the company's stock dropped 62% this month after an announcement that iAnthus would not be able to make a substantial interest payment to Gotham Green Partners, a private equity firm specializing in cannabis and cannabis-related enterprises.

The company blamed its inability to make the $4.4 million payment on a decline in public equity cannabis markets and extraordinary market conditions created by the COVID-19 pandemic, but according to investors, iAnthus has yet to explain why $5.7 million held in escrow for the firm's financing agreement with Gotham Green was not used to pay the tab.

"The members of the class, who relied upon defendants' class period statements concerning the intended use, and availability, of the escrowed funds to protect against a default under the debenture agreements with [Gotham Green], were ignorant of defendants' unwillingness to use, and/or the unavailability of, the escrowed funds," the investors claim.

The suit claims iAnthus is a highly leveraged holding company that acquires and operates a diversified portfolio of cannabis licenses and investments. It entered into a $50 million loan agreement with Gotham Green in May 2018 that provided for the withholding of $5.7 million in an escrow account to effectively pay one year's interest should iAnthus default, the investors allege.

The company entered into an amended agreement with Gotham Green last September that provided it with an additional $20 million in funding and maintained the escrow provision, the investors said.

Then, on April 6, iAnthus issued a press release announcing it had not been able to satisfy a $4.4 million interest payment due on March 31, attributing its inability to a "decline in the overall public equity cannabis markets, coupled with the extraordinary market conditions that began in Q1 2020 due to the novel coronavirus known as COVID-19 pandemic."

"The company is currently in default of the obligations to its secured debenture holders and the existence of such default triggers a cross-default of the obligation to its unsecured debenture holders," iAnthus' announcement said.

The press release also disclosed that iAnthus' board of directors had formed a special committee to investigate potential conflicts of interests and/or required disclosures with respect to its CEO and "certain related parties" and to explore "strategic alternatives available to the company in light of the prospective liquidity requirements of the company, the condition of the capital markets affecting companies in the cannabis industry and the rapid change in the state of the economy and capital markets generally caused by COVID-19."

News of the default caused the company's stock to fall from $0.469 per share on April 3 to $0.179 per share on April 6.

According to investors, iAnthus failed to disclose either that it could forgo using the escrow account to satisfy an interest payment or that the escrowed funds are exhausted, diminished or otherwise unavailable.

The company and counsel for the investors did not immediately respond to requests for comment Thursday.

The investors are represented by Seth D. Rigrodsky and Timothy J. MacFall of Rigrodsky & Long PA and Joshua H. Grabar of Grabar Law Office.

Counsel information for iAnthus is not yet available.

The case is Riback v. iAnthus Capital Holdings Inc. et al., case number 1:20-cv-03044, in the U.S. District Court for the Southern District of New York.

--Editing by Jay Jackson Jr.