

A Budding Rebellion

Evan Hill 03-10-2008

When the Drug Enforcement Administration sent letters last year to California landlords who rent to marijuana dispensaries, reminding them — not so subtly — that it's a federal crime to do so, they opened another front in the battle to define how pot clubs operate in the hazy border between state and federal law.

The letters state that "federal law takes precedence over state law" and that Proposition 215 — which in 1996 legalized medical marijuana in California — offers landlords no defense against penalties of 20 years in prison and the loss of their property.

Numerous pot clubs have closed in anticipation of eviction. But some are pushing back, and using the courts to do it.

Steven Schectman, an attorney with Arcata-based Pacific Law, is leading the charge against the DEA on their behalf.

In late January, he sued the agency ([.pdf](#)) in federal court, alleging it violated pot clubs' civil rights and seeking an injunction to halt future letters.

"The DEA is perceived to be a super-entity in the United States, and that's because they've been abusive in their police powers," Schectman said.

He also successfully defended a Los Angeles club, the Arts District Healing Center, from an eviction brought after its landlord received a letter. Schectman argued that the landlord had no right to evict the club because the tenant hadn't broken the lease contract, and a judge agreed.

Dale Gieringer, California director of the National Organization for the Reform of Marijuana Laws, calls this the "Schectman

ploy." The strategy has emerged as a model for how the fight between pot clubs and the DEA could play out over the coming months.

The letters began arriving at the doors of Southern California landlords in June and in ensuing months spread throughout the state.

That summer, at a house in the Berkeley hills, a group of attorneys met to formulate a strategy that could protect both dispensaries and their landlords. Among them were Schectman and medical marijuana champion William Panzer, a lawyer and co-author of Prop 215.

They figured sympathetic landlords could file eviction proceedings as a way of demonstrating to the feds that they were taking the warnings seriously. State courts, they reasoned, wouldn't evict clubs that hadn't violated their leases.

This avenue would work best where the lease didn't spell out that tenants were selling medical marijuana, Panzer said. If the lease put the owner on notice, he explained, they'd have a harder time arguing against federal forfeiture.

Whether that strategy puts the DEA letters to rest for clubs and landlords all depends, attorneys said, on if the Department of Justice actually follows through on the DEA's threats of federal prosecution against landlords.

Javier Pena, special agent in charge of the DEA's San Francisco division, said the letters are not a threat, but a courtesy intended to "educate [landlords] as to what the law says."

He estimated around 50 have been sent in the Northern District so far. Pena wouldn't say how many clubs have closed, or comment on the DEA's plans or Schectman's defense

strategy.

Joseph Russoniello, U.S. attorney for California's Northern District, said the letters do have legal teeth, but that "right now we're in a wait-and-see period."

He also made a notable distinction between commercial dispensaries and small-scale medical operations.

"Prosecuting medicinal providers is low [priority] if they're true caregivers," he said.

Russoniello said a typical "caregiver" would operate "at cost with no profits" and have a small staff. He said large, profiteering commercial operations "do not meet my definition of low priority."

"That does not mean and should not be taken to mean that there's going to be a crackdown by the U.S. attorney," he said.

In the Arts District club case, after the club's landlord went to Los Angeles County Superior Court to get an eviction, Schectman successfully argued that the club hadn't broken its lease contract with the landlord. The lease stated that the club was renting the property for "dispensing medical cannabis and other related uses, all to be legal in the City and County of Los Angeles, California."

Panzer said Schectman's strategy may open landlords to the risk of prosecution.

"If the lease on [the property] said, 'This is for a medical cannabis dispensary,' then none of this works anyway because the landlord was on notice from the get-go," Panzer said.

On the other hand, former San Francisco District Attorney Terence Hallinan, who represents 14 clubs in the city, said it might still help the landlords to try to evict a known dispensary.

"Presumably if the landlord follows up on the warning, then the DEA would not move to forfeit their property," he said.

A landlord for one club that Hallinan represents has brought an eviction action, and Hallinan has not yet filed his response.

Though Schectman's client was spared from eviction, San Francisco solo Matthew Kumin, who does legal work for several pot dispensaries, gives the DEA points for their tactic, saying it's a cheap and effective way to scare landlords into getting rid of their clubs. In recent years, federal law enforcement's anti-pot-club strategy seemed to consist of raids of the premises.

"The DEA scored a big hit with this landlord letter ... I don't quite understand why they didn't try it many, many years ago," he said.

But Schectman, whose suit against the DEA remains in preliminary stages in the state's Central District, said the agency has now made itself vulnerable to legal attack.

"What the DEA has done with these letters is it has exposed itself."

While the San Francisco board of supervisors has rallied to medicinal marijuana's defense in the wake of the DEA's actions, some observers said the federal government risks stepping on a different kind of hornets' nest if it pursues forfeiture.

"It's a very nasty and politically unpopular tactic to go after property owners," Gieringer said. "Republicans don't like it when you go after property owners."