

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION**

In re:	)	
	)	Chapter 12
GARY VINCENT VECCHIONE	)	Case No. 13-42201-MSH
	)	
Debtor	)	
	)	

**MEMORANDUM OF DECISION AND ORDER ON MOTION TO DISMISS**

Before me is the motion of Otwood Investment Group, LLC to dismiss this chapter 12 case filed by the *pro se* debtor, Gary Vincent Vecchione. Otwood seeks dismissal of Mr. Vecchione’s bankruptcy case on a variety of grounds, chief among them is Otwood’s claim that Mr. Vecchione is not eligible to be a chapter 12 debtor.

**Facts**

On August 29, 2013, Mr. Vecchione filed a voluntary petition for relief under chapter 12 of the Bankruptcy Code (Title 11 of the U.S. Code). On the same day, he commenced an adversary proceeding against Otwood and various individuals.

In schedule A (real estate) of the schedules of assets and liabilities accompanying his bankruptcy petition, Mr. Vecchione lists sole ownership of 10.5 acres of land located at 189 Mendon Street, Uxbridge, Massachusetts.<sup>1</sup> According to Mr Vecchione’s schedules A and D (creditors holding secured claims), the Mendon Street land has a value of \$150,000 and the land secures a \$90,000 claim held by Otwood. Mr. Vecchione’s schedules list only two other creditors, both unsecured: “Why Not Lease It. Com” holding a claim in the amount of \$1,000 and Don

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<sup>1</sup> In fact record title to the Mendon Street property is held by Otwood which purchased it at a prepetition foreclosure sale.

Virostek holding a claim in the amount of \$10,000. In schedule I (income), Mr. Vecchione lists his occupation as nursery manager of the Uxbridge Farm and Fairgrounds located at the Mendon Street property and states that he has been employed there for eleven years. He claims monthly income of \$2,400 from the operation of a business but fails to attach the required statement detailing the nature and source of such income. According to schedule I, his wife, who is not a debtor in this case, has monthly income of \$3,000 from her employment as a bookkeeper plus \$600 a month from a pension or retirement fund.<sup>2</sup> Schedule I also states that Mr. Vecchione's income will increase "once business mortgage/possession is stabilized." Mr. Vecchione's schedule J (expenses) does not reflect any regular expenses from the operation of a business.

In his Statement of Financial Affairs ("SOFA"), Mr. Vecchione lists his wife's income for the period 2011 through 2013. For himself he lists income only for the year 2012 of \$1,108 with the notation that this income was derived from his "self-employment" at the Mendon Street property. Included in Ms. Vecchione's income for 2011 is \$9,471 received by her for "self-employment" at the Mendon Street property along with a notation that the business at the Mendon Street property was operated by Mr. Vecchione.

On November 20, 2013, I granted Otwood's motion for relief from the automatic stay to permit Otwood to proceed with, among other things, evicting Mr. Vecchione from the Mendon Street property which it had purchased at a prepetition foreclosure sale.

At the hearing on the motion to dismiss Mr. Vecchione conceded that he has engaged in no farming operations in the commonly understood sense at the Mendon Street property or anywhere

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<sup>2</sup> Schedule I fails to note any deductions from Ms. Vecchione's income as a bookkeeper although line 5 of schedule I, the subtotal of payroll deductions, claims her deductions total \$3,000. This is clearly an error as the same schedule claims her average monthly income is \$3,600.

else for quite some time. He stated that for this reason he does not maintain insurance for his business at the Mendon Street property. At the hearing, Mr. Vecchione argued, however, that he was in the “agritourism” business. He stated that at various times he used his land, which I take to be a reference to the Mendon Street property, for recreational activities open to the public for a fee, including ice skating, skate sharpening, sledding, hayrides and archery. He also stated that two years ago he grew pumpkins and watermelons on land other than the Mendon Street property owned by a third party. He also stated he used that land for excavation of gravel and fill. According to Mr. Vecchione, these activities make him a farmer eligible to file a chapter 12 case.

### **Discussion**

“Only a family farmer ... with regular income may be a debtor under chapter 12” of the Bankruptcy Code. 11 U.S.C. § 109(f). The Bankruptcy Code defines a family farmer, in part, as:

[an] individual or individual and spouse *engaged in a farming operation* whose aggregate debts do not exceed \$3,544,525 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for—

- (i) the taxable year preceding; or
- (ii) each of the 2d and 3d taxable years preceding the taxable year in which the case concerning such individual or such individual and spouse was filed.

11 U.S.C. § 101(18) (emphasis added). “Farming operation,” in turn, is defined as including “farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.” 11 U.S.C. § 101(21). As this is not an exclusive list, other activities not specifically mentioned may also

qualify as farming operations. *In re Watford*, 898 F.2d 1525, 1527 (11th Cir.1990). The definition should be construed liberally, *id.*, but at the same time “it cannot be so broadly applied as to bring in operations clearly outside the nature or practices one normally associates with farming.” *In re Dakota Lay'd Eggs*, 57 B.R. 648, 653 (Bankr. D.N.D. 1986). Ultimately, each case should be decided on its own unique facts. *In re Buckingham*, 197 B.R. 97, 103 (Bankr. D. Mont. 1996).

Mr. Vecchione is not a family farmer. He is not currently engaged in any farming operations and has not been involved in any farming operations for at least two years when he last grew pumpkins and watermelons. His SOFA lists no income for 2011, the year Mr. Vecchione claims to have grown pumpkins and watermelons. Mr. Vecchione’s assertion that agritourism is a farming operation is not supported by the letter or spirit of Bankruptcy Code § 101(18). By his logic Disneyland is a farming operation because it was built on land that had formerly been an orange grove.

### **Conclusion**

Because Mr. Vecchione is not a family farmer with regular income derived from farming operations, he is not eligible for relief under chapter 12 of the Bankruptcy Code. Before acting on Otwood’s motion to dismiss, I will give Mr. Vecchione until December 13, 2013, to move to convert his case to a chapter of the Bankruptcy Code for which he is eligible.

By the Court,



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Melvin S. Hoffman  
U.S. Bankruptcy Judge

Gary Vincent Vecchione, pro se

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Fletcher Tilton PC  
Worcester MA  
for Otwood Investment Group, LLC,