

Celsius Cryptocurrency Woes

Bad News for Those Whose Cryptocurrency Is Trapped in the Estate, Could Be Worse for Those Who Think They've Escaped

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On January 4, 2023, the judge in the *Celsius Network* bankruptcy case^[1] ruled that Celsius users who had deposited cryptocurrency in Celsius's "Earn Accounts" had transferred ownership of their cryptocurrency to Celsius. These users had deposited their cryptocurrency in the hopes of earning a high rate of interest. Unfortunately, Celsius's terms and conditions came with a "catch"—while the cryptocurrency was in the Earn Account, it belonged to Celsius. Thus, at the time it filed for bankruptcy protection, Celsius owned any cryptocurrency in the Earn Accounts; depositors had nothing more than an "I.O.U."—the same as any other creditor.

Media reports have noted that this clearly is bad news for Earn Account users, as they only hold unsecured claims against the estate instead of claims to their original cryptocurrency. Yet, the news may be even worse for those who withdrew their cryptocurrency from Celsius in the three months before it filed.

Presumably, the bankruptcy court also will determine that even though Celsius owned the cryptocurrency, it remained obligated to return it to the depositors at some point. In other words, each deposit likely came with a corresponding debt for return of the deposit. If so, then whenever a depositor withdrew its cryptocurrency, Celsius's debt to that depositor was repaid.

Any depositor who withdrew cryptocurrency from Celsius in the three months before Celsius filed for bankruptcy protection could face a "preference" lawsuit. A "preference" typically occurs when a creditor receives payment from a debtor in the three months before the debtor files for bankruptcy protection. Here, Celsius users who thought they had escaped the bankruptcy by withdrawing their cryptocurrency in the days before Celsius filed its bankruptcy petition might be unpleasantly surprised to find themselves sued by the estate for return of the withdrawal.

Worse, the bankruptcy estate might sue not for the cryptocurrency withdrawn, but for what it was worth at the time of the withdrawal. If a preference suit is successful, the Bankruptcy Code allows the estate to recover "the property transferred, or, if the court so orders, the value of such property."^[2] Property often is valued at the time of the transfer rather than its current value. For example, although bitcoin is trading for around \$17,500 now, a successful preference suit might value it at around \$21,000 if the withdrawal occurred around July 15, 2022 (the date the bankruptcy was filed) or as much as \$40,000 if the bitcoin was withdrawn in April. In essence, people who thought they had escaped could be worse off than the people whose cryptocurrency remains trapped within (and owned by) the Celsius bankruptcy estate.

Miller Canfield's attorneys are monitoring the situation and remain ready to assist those who need help dealing with cryptocurrency issues in bankruptcy situations. Please contact the author of this article if you find yourself in need of such support.

[1] Currently pending as *In re Celsius Network LLC, et al.*, Case No. 22-10964 (Jointly Administered) in the United States Bankruptcy Court for the Southern District of New York.

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[2] 11 U.S.C. § 550(a).