



## **Bankruptcy Discharge Enforcement In New York**

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*The bankruptcy discharge is the typical end of the Chapter 7 or Chapter 13 case. A Discharge of Debtor releases you from all collection activities in connection with a discharged debt. Many New York bankruptcy lawyers believe that the only way procedurally to enforce the discharge injunction is by filing an adversary proceeding.*

The recent case of In re Nassoko, Case No. 07-11966 (ALG) (Bankr. S.D.N.Y., 2009) cleared this up once and for all, stating that the debtor may file a motion for sanctions rather than the more time consuming and costly process of filing an adversary proceeding. In response to the creditor's objection to the filing of a motion for sanctions, Judge Gropper correctly stated that

E-Loan also raises a procedural objection to the steps followed by the Debtor in seeking relief, arguing that Bankruptcy Rule 7001 requires an adversary proceeding to be filed because the Debtor is seeking relief relating to "a proceeding to recover money or property" or a "proceeding to obtain an injunction." Fed. R. Bankr. P. 7001(1), (7). This is not correct. "[A] debtor may enforce a discharge under 11 U.S.C. 524 by means of a contempt motion." *Texaco v. Sanders (In re Texaco Inc.)*, 182 B.R. 937, 945-46 (Bankr. S.D.N.Y. 1985); see also *In re Weichmann*, 200,1 Bankr. Lexis 1797, at \*3 (Bankr. N.D. Ill. Oct. 30, 2001) (holding that "a contempt order is the appropriate remedy for violations under 524(a) (2), and that any monetary relief awardable is in the form of sanctions, rather than damages."); *In re Bock*, 29,7 B.R. 22 (Bankr. W.D.N.C. 2001) (same). This is consistent with the principle that it is unnecessary to proceed by way of

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adversary proceeding when requesting sanctions accompanied by damages for violation of the automatic stay under 362 of the Bankruptcy Code. See *In re Hooker Investments, Inc.*, 116 B.R. 375, 378 (Bankr. S.D.N.Y. 1990).

I can't speak to other jurisdictions, but New York clearly allows for the faster, less costly option of filing a motion for sanctions in the case of a violation of the bankruptcy [discharge](#) injunction.

**What does this mean for consumers in New York who are subject to continued collection activity after the issuance of the bankruptcy discharge?**

For one, the process is **faster** than the old, clunky procedural way of filing an adversary proceeding against the offending creditor. You can get relief in as little as 60-90 days rather than having to deal with the cumbersome process of filing and serving an adversary proceeding.

Second, the process is far less expensive for the offending creditor. This is important for you, the person who filed for bankruptcy, because the creditor will likely be paying your legal fees as part of any settlement. Lower fees make it easier for the creditor to settle quickly in your favor.

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