

A Creditor Objected to My Discharge...Now What?

When a debtor files for Chapter 7 bankruptcy, the court mails the creditors a document entitled "Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines". One of the deadlines set by the court is when the creditors must take legal action to prevent the debtor from receiving a discharge of some or all of the debts. This objection is accomplished by filing a lawsuit within the bankruptcy case called an adversary proceeding.

Most adversary proceedings that I see are filed by credit card companies alleging that a debtor made purchases or took cash advances without the intention of repaying them. The best way to avoid an adversary proceeding is for the debtor to stop using their credit cards for a minimum of 90 days prior to filing for bankruptcy. Luxury purchases and cash advances in close proximity to the filing date of the bankruptcy might be presumed to be fraudulent, giving the creditor an advantage in the adversary proceeding.

Most credit card companies that regularly threaten to file adversary proceedings are usually looking for "low hanging fruit" (i.e. a quick settlement with the debtor). Perhaps they feel that a debtor will not be able afford more legal fees to defend the new lawsuit or will simply be scared into submission.

In my experience, creditors will often back away very quickly if confronted with a strong defense. In one recent case I handled, Wells Fargo dropped a claim that my client had fraudulently borrowed \$10,000 on a credit card less than a month after I had filed an answer to the adversary complaint on behalf of my client. Perhaps it was the fact that the bankruptcy court could have ordered Wells Fargo to pay my client's legal fees if it was found that the lawsuit had been brought without sufficient justification for the fraud allegations.

Don't let a creditor scare you into giving up your rightful discharge. If you are in Southern California and need assistance in defending an adversary proceeding, please feel free to contact us.

About the Author: [Carl H. Starrett II](#) has been a licensed attorney since 1993 and is a member in good standing with the California State Bar and the San Diego County Bar Association. Mr. Starrett practices in the areas of [bankruptcy](#), [business litigation](#), [construction](#), [corporate planning](#) and [debt collection](#).