What Happens If A Creditor Objects to Discharge of Debt in Bankruptcy?

Question:

Eight months ago I took out cash on 2 credit cards; $15,000 per card. I deposited the money into my checking account. Two weeks later I put $27,000 in a brokerage account. Eight months I've lost most of it, all but about $1,800 dollars. I am now claiming bankruptcy along with another $50,000 in unsecured debt. (Bad moves, I know). Will loosing this money hurt my chances of bankruptcy?

Answer:

I hope this is a discussion you will soon be having with "your" attorney; that sort of transaction makes you a high risk bankruptcy and should not be pursued without experienced representation.

Although it almost never happens in most bankruptcies, a creditor has the right to object to the discharge of its debt. To do so, the creditor must file an Adversary Proceeding (which is the term given to a lawsuit that is filed in bankruptcy court) and prove that the debtor defrauded it in some way. The proto-typical example would be a debtor who purchased a $2,800 LED flat screen television using his Chase Visa and filed bankruptcy 2 months later. The creditor will object and win because the debtor used credit in such close proximity to filing bankruptcy that the court will presume the debtor had no intent to repay the debt.

Given the amounts involved in your situation and the fact that the transactions were cash advances, you have an above average risk of a creditor objection. Since it is difficult for the creditor to prove actual intent to defraud (the court cannot access your state of mind directly), the court will look at the circumstances surrounding the transactions. Some of the factors the court will consider are the following: (1) did you make any payments to the debt; (2) were you insolvent at the time you took out the cash advances; (3) how did

you use the funds, among others. In these scenarios, time is a debtor's friend. The more time you can put between you and the time you took out the cash advances, the lower the objection risk. However, if you were not making at least the minimum payments during that time, then no amount of time can save you; all you can do is hope the creditor doesn't care enough to object.

If the creditor objects, you have 2 options; (1) defend the case (most attorneys charge significantly more for this service) or (2) settle the case. Before an objection is filed, the creditor's attorney will usually make contact with the debtor's attorney (also, the creditor's attorney may appear at your 341 Meeting of Creditors to ask you questions about the cash advances to assess your defense and get you on the record when you are unprepared). Unless I feel the creditor's case is a slam dunk, I will make the creditor's attorney at least file the Adversary Proceeding. Filing these proceedings is risky for the creditor too; if it files the objection and loses, it can be held responsible for the debtor's attorney's fees. However, if the creditor has a strong case, then a negotiated settlement with a payment plan is a good alternative. The attorneys on the other side are working on contingency; thus, a quick, voluntary agreement with the debtor is in their interest. The end result, you will emerge from bankruptcy still owing some money. The silver lining is that these objections do not usually affect your bankruptcy as a whole; the rest of your case will proceed as normal and other debts that are dischargeable will be discharged.

I strongly suggest you retain experienced counsel to represent you in your case, and throw cost considerations out the window. You will want an attorney that can guide you through this process, help you minimize the risk of an objection, and possibly defend the objection if necessary. However, that level of service will come at a price. But look at it this way, if the attorney you hire can get this $30,000 discharged (or a good portion of it), that is certainly worth $6,000+ in attorney's fees.

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