Cash advances and bankruptcy, do they mix?

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Cash advances prior to bankruptcy are common, but do raise some concerns that should be addressed by a professional to assess the risk of bad results in a potential bankruptcy prior to filing. If the cash advances were recently taken, or as bankruptcy practitioners may describe as "on the eve of bankruptcy," there are a number of sections of the bankruptcy code that may apply to the circumstances.

At least one section that may apply and to watch out for is 523(a)(2)(C)(i)(II). It provides that "cash advances aggregating more than $875.00 . . . on or within 70 days of the [the bankruptcy filing date] are presumed to be nondischargeable . . . ." "What does this mean," one might ask. Well, as I also state in my last posting, it doesn't automatically mean the cash advances are not eliminated (nondischargeable), the creditor (or the bankruptcy trustee assigned to your case) needs to take affirmative action. If the creditor (or trustee) does not take appropriate action to begin with, as long as your listed the debt on your petition properly, the debt should be discharged. But a creditor (or trustee) can file an adversary proceeding, which is essentially a law suit related to a bankruptcy case, to determine if the cash advances can be eliminated (discharged) or not.

An adversary proceeding is separate from the bankruptcy case itself. Normally, you will need to secure legal representation to defend an adversary proceeding separately. This is because even if you have a lawyer representing you in the bankruptcy, the agreement with that bankruptcy lawyer typically does not include representation in an adversary proceeding.

The tough part with section 523(a)(2)(C)(i)(II) is that it provides a presumption that the debt cannot be eliminated, which gives your opponent an advantage. There is a dispute in the law as to the extent of the presumption, but nonetheless, it is an uphill battle for the debtor. *In re* Ritter, 404 B.R. 811, 822 (Bankr. E.D. Penn. 2009).

"But I didn't take cash advances, I just used convenience checks provided by my credit card company to draw cash" you might say. "Convenience checks" to draw cash from a credit card account is likely to be considered a cash advance per the bankruptcy code. *In re* Ritter, 404 B.R. at 827 fn.17.

As stated, this is just one of the many sections of the bankruptcy code (and concerns) that arise when cash advances have occurred prior to contemplating bankruptcy. It pays to consult with an experienced bankruptcy practitioner to review the issues and assess the risk prior to filing.

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