Bankruptcy Court Holds Credit Union Policy Does Not Violate Discharge Injunction

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A New York Bankruptcy Court has held that a statement from a credit union in response to a Chapter 7 debtor who received a discharge of his obligations owed to the credit union that the credit union had a policy prohibiting the reopening or reactivation of the debtor's accounts unless the old debt was paid in full did not violate the discharge injunction found in 11 U.S.C. §524(a)(2).

The case of *In re Morgan*, decided on December 12, 2017, involved a Chapter 7 Debtor who received a discharge on March 20, 2017, which included obligations due Pentagon Federal Credit Union ("PenFed"). Less than a month after the entry of the Discharge Order, the Debtor initiated contact with PenFed indicating that he was unable to initiate fund transfers at the Credit Union and informing PenFed of his discharge. His communications also indicated that he wished "rebuild" his account asking PenFed representatives to contact him on how to begin the process. The Credit Union responded that his checking account had been closed based on an unpaid overdraft and another account had been closed resulting from a $500 charge off. PenFed responded that its policy required repayment of these obligations in order to reactivate any accounts that "caused PenFed to incur any loss due to [Debtor's] activities." PenFed also informed the former customer that its policy allowed it to terminate all accounts or services under the circumstances except his Regular Share Account. The Debtor moved to reopen his case and filed a Motion for Sanctions for violation of the Discharge Injunction.

The Court acknowledged that the "fundamental purpose of bankruptcy law is to provide a fresh start to the honest but unfortunate Debtor." However, the Bankruptcy Court adopted the reasoning of the Third Circuit Court of Appeals in the 1988 case of *Brown v. Pennsylvania State Employees Credit Union* and found that PenFed did not act improperly to coerce or harass the Debtor into paying a pre-petition debt subject to a recent discharge when it responded to the Debtor's inquiry. The Bankruptcy Court held that PenFed simply informed the Debtor of its policy requiring payment in full of delinquent account balances before reinstatement or reactivation of inactive or terminated accounts and that such statements or actions did not

inhibit the Debtor's fresh start. The Bankruptcy Court stated that "while the Debtor may have one less financial institution with which it can do business, the opportunity he received to take full control of his financial future after being granted a [C]hapter 7 discharge is no less promising."

Three takeaways from this case. First, if a credit union wants to prohibit the reopening or reactivation of an account unless the old debt is paid in full, it should have a written policy to this effect. Second, such policy should be uniformly applied to all account debtors, regardless of bankruptcy. Third, if the debtor/ borrower wants to voluntarily repay the old debt in order to activate a new account, it appears from this case that the debtor can do so without running afoul of the discharge injunction or failure of the debtor to reaffirm his debt prior to discharge.

For more information about this case or if you would like us to review your policies in this regard, Ron Jones may be reached at (843) 720-1740 or RJones@nexsenpruet.com.

In re Morgan, 2017 WL 6371349 (NDNY December 12, 2017).

Ron Jones is an attorney in Nexsen Pruet's Charleston office, where he focuses his practice on bankruptcy and creditors' rights. He has extensive experience in debtor and creditor representation and am a certified specialist in bankruptcy and debtor-creditor law, earning specialist distinction from the South Carolina Supreme Court.