

Denial of Discharge for a “False Oath or Account” – Omitted Creditors Count

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In a November 2007 decision, the United States Bankruptcy Appellate Panel, Ninth Circuit affirmed the denial of a debtor’s discharge, in an action brought by a creditor under Section 727(a)(4)(2) (knowingly and fraudulently making a false oath or account) (*In re Eyad Khalil* 2007 Bankr. LEXIS 4102).

Of particular interest, the denial of the debtor’s discharge was based in part upon the omission of information about *creditors* of the debtors, i.e., the omission of information about the debtor’s *liabilities*.

In this case, the debtor did “not dispute that his bankruptcy schedules and statement of financial affairs omitted several transfers involving his family members and that they [his family members] are not listed as creditors or codebtors.”

Among other things, the debtor asserted that, since he did not believe that his uncle would come after him, he did not consider the uncle to be a creditor.

After trial, the bankruptcy court entered a judgment denying debtor’s discharge. The bankruptcy court:

- Found the omissions to be “numerous and/or substantial in terms of dollar amount”
- Stated that debtor’s explanation – that these were relatives that he didn’t think would come after him – was unpersuasive
- Was troubled that debtor didn’t amend his schedules and statement of financial affairs to disclose all omitted or misstated items
- Noted that, “as Debtor admits, this was ‘not a matter of mistake or forgetting that a debt existed’ but a ‘conscious decision’ not to list debts or family members”

One of debtor’s arguments was that proof of a “knowing and fraudulent intent” required proof of a motive, such as an intent to hide assets. Additionally, the debtor argued that any duty to amend his bankruptcy schedules and statement of financial affairs related *only* to omitted assets, and *not* to omitted creditors.

The Bankruptcy Appellate Panel stated that a motive (e.g., hiding assets) could support, but was not required for, a finding of a knowing and fraudulent intent.

Further, the Bankruptcy Appellate Panel rejected the debtor’s arguments about omitting liabilities:

“[N]ondisclosure of creditors (and debts) can be just as important as nondisclosure of assets. Information regarding business and personal dealings can lead to discovery of assets, potentially avoidable transfers, or other relevant information such as grounds to deny a debtor’s discharge. ‘A false statement or omission may be material even if it does not cause direct financial prejudice to creditors.’ ”

This case demonstrates that omitted liabilities may properly be part of an action by a creditor seeking denial of the debtor’s discharge because of a false oath or account, and that a creditor need not prove the motivation for debtor’s omissions in order to obtain a denial of discharge.