

I filed for bankruptcy and my credit union has frozen my bank account and seeks to “set off” the funds because of an outstanding balance on my credit union credit card, what can I do?

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There may be hope. Initially, we will cover some history on the subject.

Although it seems credit unions and bank have not tried this much in Massachusetts, in the past a credit union generally had a right to administratively freeze a bank account to prepare to seek a set off to collect an outstanding credit card balance upon a bankruptcy filing. Citizens Bank of Maryland v. Strumpf, 516 U.S. 16 (1995). That means the credit union, again generally, had the right to collect against the funds in a bank account for the unpaid balance of a credit card the credit union issued to the debtor. Some debtors of certain credit unions were finding that their checking accounts were being frozen shortly after filing their case. Under certain circumstances, some bankruptcy practitioners would advise their clients to withdraw funds from accounts to avoid this possibility.

Now there appears to be a new and creative argument the debtor can raise when he finds himself in this situation. The gist of the argument is that a section of a new law, known as 15 U.S.C. § 1666h(a), part of the Fair Credit Billing Act, generally prohibits a card issuer from seizing or pursuing a set off of funds on deposit to satisfy an outstanding credit card obligation (with the same bank). This argument was tested in the case of *Gardner v. Montgomery County Teachers Fed. Credit Union* and came out on top. 864 F. Supp. 410 (D. Md. 2012). In that particular case, the bank argued that the debtor had pledged a security interest, which may have allowed the bank to prevail. There were a number of legally technical issues addressed and at the end of the day the bank was unsuccessful under the facts in the case.

This does not mean that a bank or credit union can never employ a set off; each case is different and facts can make the difference. But it does mean that there is a possible new argument to explore and possibly raise if a debtor finds himself facing an administrative freeze and possible future set off. Also, understand that before taking any action based on this blog or any other, it is best to seek the advice of competent bankruptcy counsel because your case is likely to be unique and have its own considerations.

In the event that you are considering bankruptcy and may be facing an administrative freeze or set off in Massachusetts, feel free to contact us.

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