

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 02784-16

**NEW JERSEY HIGHER EDUCATION
STUDENT ASSISTANCE AUTHORITY,**

Petitioner,

v.

SYLVIO SANDINO,

Respondent.

Philip I. Levitan, Esq., for petitioner (Fein, Such, Khan & Sheppard, P.C.,
attorneys)

No Appearance by respondent

Record Closed: July 22, 2016

Decided: August 8 2016

BEFORE **EVELYN J. MAROSE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, New Jersey Higher Education Student Assistance Authority (NJHESAA or Authority), proposes to garnish up to 15% of the wages of respondent, Sylvio Sandino, because respondent defaulted on his higher education student loan repayments. NJHESAA issued a Notice of Wage Garnishment on October 28, 2015. Respondent filed a Request for Hearing, dated December 2, 2015.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on February 17, 2016, as a contested case.

The hearing was scheduled for July 22, 2016, but was adjourned because respondent failed to appear.

ISSUE

The issue is whether the Authority has a basis to garnish petitioner's wages due to an asserted default in repayment of student loans.

LEGAL BACKGROUND

The Authority is a New Jersey State agency that administers and guarantees Federal and State funded student loans. N.J.S.A. 18A:72-1 - 21; N.J.A.C. 9A:10-1.4. It purchases loans on which student borrowers have defaulted and pursues various remedies to collect the debts including wage garnishment up to 15% of the debtor's wages. 20 U.S.C. §1095(a). The debtor must be afforded an opportunity to contest the garnishment and be heard before an independent hearing officer, such as an Administrative Law Judge. Ibid.

Debt collection is subject to Federal regulation. The Authority bears the burden of proving the existence and amount of the debt after which the burden shifts to the debtor to establish grounds to discharge the loan debt or to postpone wage garnishment.

FINDINGS OF FACT

Based on the Affidavit of Janice Seitz of NJHESAA, I **FIND** the following are the **FACTS**:

1. On or about August 16, 2004, respondent executed a Master Promissory Note for a guaranteed student loan for the purpose of paying tuition to Bloomfield College. As a result thereof, Nelnet – ASAP/Union disbursed the sum of \$3,500.00 to Bloomfield College on behalf of respondent.
2. Under the terms of the promissory/installment notes signed by respondent, payments became due and owing on the guaranteed student loan.
3. Respondent failed to make the payments as required and has defaulted.
4. As a result of the default, NJHESAA was required to honor its guarantee and purchase the note upon which respondent is in default.
5. At the time the NJHESAA acquired the note, \$3,627.71 was due and owing. (P-1)
6. Interest continued to accrue pursuant to the promissory note and collection costs have been assessed pursuant to 34 CFR §682.410(b)(2).
7. On or about October 28, 2015, the NJHESAA issued a Notice of Administrative Wage Garnishment to respondent.
8. As of July 22, 2016, the sum of \$1,757.77 was due and owing and Interest continues to accrue.

ANALYSIS

Pursuant to federal law, a guarantee agency, such as NJHESAA, may garnish the disposable pay of an individual to collect the amount owed by that individual for the repayment of a student loan for higher education expenses, if he or she is not currently making the required repayment. 20 U.S.C.A. 1095a (a).

The amount deducted may not exceed fifteen percent of disposable pay. 20 U.S.C.A. 1095a (a)1.

In order to impose an administrative garnishment, a guarantee agency must present records which show that the debt exists in the amount stated in the garnishment notice and that the debt is delinquent. 34 CFR 34.14(a). Once NJHESAA meets that burden, and if the debtor disputes the existence or the amount of the debt, he must prove by a preponderance of the credible evidence that no debt exists, that the amount claimed is incorrect or that he is not delinquent with respect to the debt. 34 CFR 34.14(b). In addition, if the debtor claims hardship he must show by credible evidence what that hardship is with respect to repayment of the note.

In this case, NJHESAA presented records, which show that the debt exists in the stated amount and that it is delinquent. NJHESAA carried its burden of proof under 34 CFR 34.14(a). I **FIND** respondent borrowed the sum asserted by NJHESAA and that he defaulted in the repayment of the same.

CONCLUSION

Accordingly, it is **ORDERED** that an administrative wage garnishment be issued immediately, directing respondent's employer to deduct from respondent's wages an amount equal to 15% of respondent's disposable pay and remit this amount to the New Jersey Higher Education Student Assistance Authority until such time as the outstanding debt resulting from the student loan has been repaid, including accrued interest and costs.

This decision is final pursuant to 34 C.F.R. § 682.410(b)(9)(i)(J) (2015).

August 8, 2016

DATE

EVELYN J. MAROSE, ALJ

Date Received at Agency:

August 8, 2016

Date Mailed to Parties:

sej
