

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 04726-18

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

Petitioner,

v.

AKMAL ROZIER,

Respondent.

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

Akmal Rozier, pro se

Record Closed: June 11, 2018

Decided: June 21, 2018

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioner, the New Jersey Higher Education Student Assistance Authority (NJHESAA), seeks to obtain an administrative wage garnishment against Respondent, Akmal Rozier (Rozier) as a result of his failure to repay loans guaranteed by the NJHESAA.

PROCEDURAL HISTORY

On or about October 25, 2017, NJHESAA issued a Notice of Administrative Wage Garnishment to Rozier. On November 27, 2017, Rozier, filed a timely appeal to the Notice of Administrative Wage Garnishment, and requested a hearing by written statement and telephone. The matter was transmitted to the Office of Administrative Law (OAL) on April 3, 2018. On April 9, 2018, the OAL transmitted a letter to Rozier informing him that a telephone hearing was scheduled for May 16, 2018, at 11:30 A.M., and requesting that he submit any additional documentation to the OAL by May 9, 2018. Rozier did not submit any additional documentation.

On May 16, 2018, a telephone hearing was conducted. Present were Rozier and counsel for NJHESAA, and Brian Lyzkiewicz (Lyzkiewicz), representative of NJHESAA. Rozier was offered a modification of the loans and the parties agreed to adjourn until June 6, 2018, to allow Rozier to submit his financial documents in connection with the modification request. On June 6, 2018, the parties appeared by telephone (Rozier, counsel for NJHESAA and Lyzkiewicz), and Rozier was given additional time to provide his 2017 1040 Federal Income Tax return (1040). The matter was adjourned to June 11, 2018.

On June 11, 2018, counsel for NJHESAA and Lyzkiewicz appeared by telephone and Rozier failed to call in and did not respond to several telephone calls from the OAL regarding his appearance. The NJHESAA reported that Rozier had not submitted the 1040 documents.

A telephone hearing was conducted on June 11, 2018, at which time the record was closed.

FINDINGS OF FACT

Based upon a review of the documents submitted by the NJHESAA, and in evidence, and the testimony in the hearing, I **FIND** the following facts:

1. Rozier executed three master promissory notes as follows:
 - a. On or about March 10, 2001, Rozier executed a Federal Stafford Loan Master Promissory Note (Stafford Loan Note) for a guaranteed student loan (March Note) for guaranteed student loan for the purpose of paying tuition at Fairleigh Dickinson University. As a result, thereof, the lender, EDUCAID disbursed the sum of \$\$9,250 (P-1, Exhibit A).
 - b. Pursuant to the terms of the March Note, installments became due and owing on or about December 4, 2004.
 - c. On or about January 16, 2002, Rozier executed a Stafford Loan Note for a guaranteed student loan (January Note) for the purpose of paying tuition to Raritan Valley Community College. As a result thereof, the lender, ASAP/Union Bank & Trust disbursed the sum of \$1,313 (P-1, Exhibit B).
 - d. Pursuant to the terms of the January Note, installments became due and owing on or about (the information was not provided in the Affidavit).
 - e. On or about September 3, 2003, Rozier executed a Stafford Loan Note for a guaranteed student loan (September Note) for the purpose of paying tuition to Raritan Valley Community College. As a result thereof, the lender, ASAP/Union Bank & Trust disbursed the sum of \$2,313 (P-1, Exhibit C).
 - f. Pursuant to the terms of the September Note, payments became due and owing thereunder on or about April 21, 2008.
2. Rozier defaulted on the aforesaid student loans by failing to make the payments required thereunder (P-1).
3. As a result of the aforesaid default, the NJHESAA was required to honor its guarantee to the lenders. At the time NJHESAA acquired said loan, the amount of \$11,674.39, was due and owing. Interest continued to accrue pursuant to the Promissory Note. Collection costs have been assessed pursuant to 34 C.F.R. §682.410(b) (2) (P-1).

4. On or about October 25, 2017, NJHESAA, acting pursuant to 20 U.S.C.A. §1095(a) et seq. and 34 C.F.R. §682.410(9), issued a notice of Administrative Wage Garnishment to the Rozier (P-1).
5. On November 27, 2017, Rozier timely filed this appeal of NJHESAA's Administrative Wage Garnishment, where Rozier checked off that the wage garnishment would result in "extreme financial hardship" as he was paying child support by a prior wage garnishment of \$249 weekly (R-1).
6. Rozier also explained that he defaulted on his loan payments because he was incarcerated. However, no further information was provided regarding his incarceration.
7. Lyzkiewicz testified that as part of the attempt to resolve this matter, Rozier did provide a financial statement to NJHESAA containing his monthly income and expenses, but did not provide his 1040 for 2017.
8. Lyzkiewicz also testified that Rozier has paid \$4,316.13 toward the amount due from a prior administrative wage garnishment.
9. NJHESAA provided Rozier with copies of the loan documents and account information (P-2).
10. By correspondence dated April 9, 2018, Rozier was instructed to submit any written documentations to the OAL in connection with his defense that the administrative wage garnishment would result in an extreme financial hardship.
11. Rozier did not submit any documentation to the OAL.
12. Pursuant to the aforesaid statute and regulations, NJHESAA seeks an Order directing the respondent's employer to deduct fifteen percent (15%) of the respondent's disposable wages and remit the same to the New Jersey Higher

Education Student Assistance Authority until such time as Rozier's student loans have been repaid (P-1, ¶12).

13. Rozier acknowledges the debt and default as he does not dispute the same (R-1).

LEGAL ANALYSIS AND CONCLUSIONS

NJHESAA is a state-designated agency responsible for administration of the loan guarantee program for federal and state funded student loans. N.J.S.A. 18A:72-1 to 21; N.J.A.C. 9A:10-1.4. After purchasing an overdue loan from a lender, NJHESAA may collect the debt by appropriate means, including garnishment of wages. The debtor is entitled to request an administrative hearing before an independent hearing officer prior to issuance of a garnishment order. 20 U.S.C.A. 1095(a). Federal regulations allow the borrower to dispute the existence or amount of the loan, 34 C.F.R. 34.14(b), to demonstrate financial hardship, 34 C.F.R. 34.14(c), or to raise various defenses based on discharge of the underlying debt, 34 C.F.R. 682.402.

The NJHESAA has the burden of proving the existence and amount of a debt. 34 C.F.R. § 34.14(a)(1) (2015). The NJHESAA meets this burden by including in the record, and making available to the debtor on request, records to show that the debt exists in the amount stated in the garnishment notice, and that the debt is currently delinquent. 34 C.F.R. § 34.14(a)(2) (2015). If the debtor disputes the existence or the amount of the debt, the debtor must prove by a preponderance of the credible evidence that the debtor does not owe the debt; that the amount the NJHESAA claims is owed is incorrect; or that debtor is not delinquent with payment. 34 C.F.R. § 34.14(b) (2015).

If the debtor objects that the proposed garnishment rate would cause financial hardship, the debtor bears the burden of proving by a preponderance of the credible evidence that "withholding the amount of wages proposed in the notice would leave [the

debtor] unable to meet the basic living expenses of [the debtor] and [the debtor's] dependents.” 34 C.F.R. § 34.14(c)(1) (2015).

In the within matter, Rozier does not dispute the debt claimed by NJHESAA as he has not submitted any documentation disputing the same. Rather, Rozier objects to the wage garnishment of fifteen percent of his disposable pay as it would cause a financial hardship to him and his family due to the child support wage garnishment.

Given my findings of fact and this discussion of the law, **I CONCLUDE** that the NJHESAA has met its burden of proving the existence of the debt and the amount of the debt owed, by including in the record, and making available to Rozier, records to show that the debt exists in the amount stated in the garnishment notice, and that the debt is currently delinquent.

In addition, **I CONCLUDE** that Rozier has met the burden of proving by a preponderance of the credible evidence that the wage garnishment of fifteen percent would result in an extreme financial hardship on Rozier and his family.

Therefore, **I CONCLUDE** that an administrative wage garnishment of ten percent of Rozier's current disposable wages is appropriate under the applicable statutory and regulatory scheme and that such an administrative wage garnishment should issue.

ORDER

Given my findings of fact and conclusions of law, **I ORDER** that an administrative wage garnishment be issued against Rozier directing his employer to deduct from her wages an amount equal to ten percent of his d disposable wages and to remit that amount to the NJHESAA until the loan is repaid.

This decision is final pursuant to 34 C.F.R. § 682.410(b)(9)(i)(J) (2017).

June 21, 2018

DATE

JULIO C. MOREJON, ALJ

Date Received at Agency:

June 21, 2018

Date Mailed to Parties:

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EXHIBITS

For Petitioner

- P-1 Affidavit of Janice Seitz, on behalf of NJHESAA, and documents referenced therein
- P-2 Letter to Respondent from Agency dated providing account information and the documents provided therein.

For Respondent

- R-1 Request for Hearing