State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. HEA 8882-16

AGENCY DKT. NO. HESAA

NEW JERSEY HIGHER EDUCATION
STUDENT ASSISTANCE AUTHORITY
(NJHESAA; THE AGENCY),

Petitioner,

v.

TANQUELOR AMES,

Respondent.

Kortney Swanson-Davis, Esq., for petitioner (Schachter Portnoy, LLC, attorneys)

Tanquelor Ames, respondent, pro se, did not appear.

Record Closed: August 3, 2016 Decided: September 7, 2016

BEFORE **JOSEPH LAVERY,** ALJ t/a:

STATEMENT OF THE CASE

The **New Jersey Higher Education Student Assistance Authority (HESAA, the agency**), **petitioner**, acting under authority of 20 U.S.C.A. Sec. 1095(a) and (b) and 34 C.F.R. 682.410(b)(9) moves for an order of wage garnishment against respondent.

Respondent, Tanquelor Ames, contested this appeal for an order of garnishment brought by the agency,

Today's decision grants the agency's petition to impose garnishment.

PROCEDURAL HISTORY

This is an appeal brought by the agency, NJHESAA, seeking to garnish the wages of respondent. It was filed in the Office of Administrative Law (OAL) on June 14, 2016. The Acting Director and Chief Administrative Law Judge (OAL) appointed the undersigned on June 29, 2016, to hear and decide the matter, the hearing of which was scheduled for, and convened on August 3, 2016. On that date, the record closed.

ANALYSIS OF THE RECORD

Background:

The agency presented its case through the testimony of its witness, **Aurea Thomas**, Sr. Investigator, NJHESAA, and through accompanying exhibits entered into evidence:

Ms. Thomas affirmed that she was familiar with the books and records involved in the case, and from her personal knowledge was able to adopt the contents of the affidavit executed by Janice Seitz, Program Officer, NJHESAA (Exhibit P-1). She noted that respondent Ames had received two loans from Wachovia Bank under the aegis of the Federal Family Education Loan Program (FELP; the Act). The first Federal Safford Loan Master Promissory Note was executed on September 6, 2005, for the amount of $6,625. The second such note was made to Wachovia on September 7, 2006, in the amount of $3,313 (Exhibits P-1, P-3). In time, respondent defaulted on the payments due under the terms of the loan.

Once default occurred, the lender sought recovery from NJHESAA, the statutory guarantor under the Act. The lender entered a claim of $13,572 in principal, and $602.01 in accrued interest. The agency submitted a check in that amount to the bank on September 11, 2014 (P-3). At this point, respondent's debt was owned by the agency, obliging respondent to submit monthly payments pursuant to the schedule and in the amounts set by NJHESAA or face garnishment. Nonetheless, respondent defaulted on the loan again (Exhibit P-4). The agency notified respondent by mail of its intent to garnish (Exhibits P-1, P-4, P-6). According to Ms. Thomas, at the time of the instant hearing, August 3, 2016, the total owed, including principal, interest and fees, was $10,173.88.

In reply, respondent requested a hearing to contest this intent (Exhibit P-7), contending (a) that respondent was involuntarily separated from employment and had not been reemployed continuously for twelve months, (b) that garnishment would impose an extreme financial hardship, and (c) that respondent suffered from a "condition" preventing satisfaction of State requirements imposed as a precondition to performing the occupation for which the school provided training.

Hearing convened to resolve this conflict, but respondent was not available at the phone number of record, and was considered a non-appearance. As required by law, the hearing nevertheless went forward with the testimony from the agency.

First, Ms. Thomas recalled that she had sought data addressing financial hardship by mailing to respondent a financial statement to complete, but that this was never returned (Exhibit P-8).

Next, Ms. Thomas stated that she had called the company where respondent ostensibly worked and left a message in order to determine whether respondent had been involuntarily removed, and to gauge whether respondent had not been reemployed for twelve months. The call was not returned. Neither did respondent send related documents in support of that position, such as an application for unemployment benefits or a termination notice.

Finally, Ms. Thomas said the agency had not received proofs of disability of any kind. There was no evidence offered in support of respondent's claim of inability to meet State requirements for the occupation for which she had been trained in the school whose tuition was paid by the loan.

Findings of Fact:

To resolve disputes of material fact, **I FIND** that:

1. There are no facts on this record showing involuntary separation from employment and showing further that there has not been reemployment continuously for twelve months.
2. There are no facts of record disclosing respondent's current financial status.

3. There are no facts of record revealing a "condition" of any kind (e.g., physical, mental, age, criminal record)

Conclusions of Law

Burden of Proof:

The burden of proof falls on the agency in enforcement proceedings to prove violation of administrative regulations, Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The agency must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings, Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such as to lead a reasonably cautious mind to a given conclusion, Bornstein v. Metropolitan Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power, State v. Lewis, 67 N.J. 47 (1975). Credibility, or more specifically, credible testimony, in turn, must not only proceed from the mouth of a credible witness, but it must be credible in itself, as well, Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954).

Respondent is also held to the foregoing standards when mounting the affirmative defenses proffered (Exhibit P-7).

Applying the Law to the Facts:

The agency has carried its burden of persuasion:

Under authority of the provisions of 20 U.S.C.A. Sec. 1095(a) and (b) and 34 C.F.R. 682.410(b)(9)(i)(M) and (N), hearing was held before the undersigned.

During this proceeding, the agency, NJHESAA, was required to show by a preponderance of evidence: (a) that the debt exists, (b) that it exists in the amounts the agency has calculated, and (c) that the debtor is delinquent. This the agency has done. The testimony of its witness was credible and was supported by the unchallenged proffer of Exhibits P-1 through P-8, all now in evidence. It is plain that (a) the terms of the promissory notes, the authenticity or accuracy of which are not in dispute, (b) the financial figures standing as the amount owed, and (c) the enabling legislation (the Act) administered by NJHESAA, all compel the agency's exercise of its authority to recover respondent's expended funds with interest and associated fees.

The agency having once proved the foregoing, if respondent is to offer an affirmative defense the burden of demonstration by a preponderance of evidence shifts. At this level of proof, respondent must show: (a) that respondent was involuntarily separated from employment and had not been reemployed continuously for twelve months, (b) that "extreme financial hardship" would follow garnishment at 15 percent of respondent's disposable wages and (c) that, at the time of the loan to attend school, respondent had a condition preventing satisfaction of those State requirements needed to perform the occupation for which the school had conducted training.

Respondent did not succeed in carrying this affirmative evidentiary burden. This conclusion is inescapable because the findings of fact, supra, disclose that for none of the three elements of her three-fold argument has respondent proffered any evidence whatever. It is of no small consequence to the proofs that respondent also was also not available, after notice, for the telephone hearing respondent had requested.

Therefore, the agency, NJHESAA, lacking the fundamental data needed from respondent to do otherwise, should now be authorized to impose a garnishment at the maximum rate of 15 percent of disposable wages

DECISION

I ORDER that the total amount owed and defined of record, plus accrued interest and fees, **be recovered by garnishment**. The amount to be deducted **shall be no greater than 15 percent of respondent Tanquelor Ames' disposable wages**. 20 U.S.C.A. 1095(a)(1).

This decision is final pursuant to 34 C.F.R. § 682.410(b)(9)(i)(N) (2010).

September 7, 2016
DATE

JOSEPH LAVERY, ALJ t/a

Date Received at Agency: _____

Date Mailed to Parties: _____

LIST OF WITNESSES:

For petitioner:

Aurea Thomas

For respondent:

No appearance by respondent

LIST OF EXHIBITS:

For petitioner:

P-1 Affidavit of Janice Seitz, dated May 20, 2016
P-2 Federal Stafford Loan Master Promissory Notes, dated September 6, 2005 and September 7, 2006, respectively
P-3 NJHESAA Default Master Screen
P-4 NJHESAA Payment History Screen
P-5 NJHESAA Correspondence Screen
P-6 NJHESAA form for notice of pending garnishment intent
P-7 Request for hearing: Tanquelor Ames, dated March 24, 2016
P-8 NJHESAA financial statement form

For respondent:

None