

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 01120-15

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

Petitioner,

v.

LOUIS SCALA,

Respondent,

Russell P. Goldman, Esq., appearing for petitioner

Louis Scala, pro se, not appearing

Record Closed: February 17, 2015

Decided: March 9, 2015

BEFORE **JOAN BEDRIN MURRAY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondent, Louis Scala (“Scala” or “respondent”), applied for and was granted a total of seven (7) student loans between February 1, 1988, and October 9, 1994, to pay for tuition at the University of Medicine and Dentistry of New Jersey, Graduate School of Biomedical Sciences (“UMDNJ”). He failed to make the proper installment payments when they became due and defaulted. Petitioner, the New Jersey Higher Education Student Assistance Authority (“Authority”), was the guarantor of all the loans and subsequently purchased them from the lender. The Authority seeks an order directing the employer of Scala to deduct from his wages an amount equal to fifteen

percent of his disposable wages, and to remit this amount to petitioner until such time as respondent's student loan has been repaid. See 20 U.S.C. 1095a (2003), 34 C.F.R. 682.410(b)(9) (2003), N.J.S.A. 18A:72-1to21, N.J.A.C. 9A:10-1.4.

On or about September 24, 2014, the Authority issued a Notice of Administrative Wage Garnishment to respondent. Respondent filed a timely appeal to the Notice of Administrative Wage Garnishment, asserting that he was involuntarily separated from employment and had not been re-employed continuously for twelve months. In addition, respondent contended that garnishment of fifteen percent of his disposable pay would result in extreme financial hardship. On the form requesting a hearing, Scala provided (732) 754-0523 as his cell phone number where he could be reached during the day. Thereafter, Scala submitted documents to the Authority on November 13, 2014. Subsequently, on January 8, 2015, the Authority transmitted the matter to the Office of Administrative Law ("OAL") for hearing as a contested case. The matter was scheduled for a telephone hearing on February 17, 2015, at 3:30 P.M. Notices were sent to the parties. Upon placement of a telephone call to respondent's cell phone at the designated hearing time, respondent did not answer the call. Two additional telephone calls to the same phone number followed, with no response from respondent.

The telephone hearing then proceeded on February 17, 2015, with counsel for the Authority and with Janice Seitz, Program Officer, Servicing/Collections Unit for the Authority, after which the record closed on that date. Documents considered in deciding this case are listed in the Appendix. On February 25, 2015, eight days after the hearing of this matter, Scala telephoned my judicial chambers and told my secretary, Diana Batista, that he was at work at the time of the hearing, and had forgotten all about it. She advised him that the hearing had already taken place in his absence, and that a decision was forthcoming.

FINDINGS OF FACT

Based upon the un rebutted testimony and affidavit of Janice Seitz, Program Officer with the Authority, and the enclosures submitted therewith, to wit: copies of the loan applications executed by petitioner and the computer information documenting the loan history, including interest accrued, along with the documents submitted to the Authority by respondent,¹ I make the following **FINDINGS OF FACT**:

On the following dates and in the following amounts, Scala executed an application/promissory note for a guaranteed student loan for the purpose of paying tuition to UMDNJ:

February 1, 1988 for \$3,856 through National Westminster Bank NJ;
September 12, 1988 for \$7,500 through First Jersey Bank;
June 1, 1989 for \$7,500 through National Westminster Bank NJ;
March 22, 1991 for \$5,808 through National Westminster Bank NJ;
January 24, 1992 for \$7,500 through National Westminster Bank NJ;
September 1, 1992 for \$7,500 through National Westminster Bank NJ;
October 9, 1994 for \$8,500 through National Westminster Bank NJ;

Under the terms of the loans, payments became due and owing on the guaranteed student loans.

Thereafter, Scala defaulted on his student loans by failing to make the payments required thereunder. Consequently, the Authority was required to honor its guarantee. At the time that the Authority acquired the loans, Scala owed \$57,750.70, with interest accruing as provided in the promissory notes. In addition, collection costs were assessed pursuant to 34 C.F.R. §682.410 (b) (2). On or about September 24, 2014, the Authority, 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 directing that fifteen percent of

¹ Respondent submitted a Request for Hearing form dated October 17, 2014, and a completed monthly income and expense statement received by the Authority on November 13, 2014. He also submitted a letter from his employer, Bergen Community College, dated November 4, 2014, verifying his employment for the Fall 2014 semester. No other supporting documents were submitted by respondent.

respondent's disposable wages be remitted to petitioner until such time as the respondent's student loans have been repaid. Scala filed a timely appeal of the Authority's Notice. The amount of \$72,952.49 is presently due and owing.

Scala is a lecturer in Biology & Horticulture at Bergen Community College ("College"). In his Request for Hearing form, respondent asserts that he was involuntarily separated from his employment with the College in July 1, 2014, and rehired by the College in September 2014. He states that he has not been continuously employed for twelve months as a result. A letter from the College dated November 4, 2014, verifies that Scala was reappointed as lecturer for the Fall 2014 semester. While Scala relies on the academic calendar to support his claim of involuntary separation, I **FIND** that his employment with the College continued without separation. In addition, Scala submitted no other documents detailing his work history with the College, pointing only to what amounted to a summer vacation between July and September 2014.

In addition to the above, Scala submitted no information about the size of his household. Therefore, when considering the national and local standards published by the Internal Revenue Service, I will apply those standards for a one-person household.

Scala's gross monthly income is \$6600. He did not supply a net monthly income. His mortgage is \$2,600 per month, and his utility expenses are \$240 per month. The local standard for housing and utilities for a family of one living in Middlesex County, where respondent resides, is \$2,258 per month. Scala owns a vehicle. He did not provide any evidence that he makes car payments. His monthly expense for car insurance is \$245. He combined his expenses for gas together with food and clothing, for a total of \$650 per month. The local standard for operating one car in the New York region is \$342.

Respondent's monthly expenses include Verizon (\$200), municipal water and sewer (\$100), medical insurance and co-payments (\$300). All other items listed on his monthly income and expense statement are payments on credit card accounts, along

with his cable bill and attorney's bill. The national standard for a family of one for food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous is \$583 per month. The national standard for out-of-pocket health care is \$60 per month for individuals under the age of sixty-five

LEGAL ANALYSIS AND CONCLUSIONS

The Authority 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, the Authority 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.

A guaranty agency "may garnish the disposable pay of an individual to collect the amount owed by the individual, if he or she is not currently making required repayment under a repayment agreement," provided, however, that the individual be granted an opportunity for a hearing conducted by an independent hearing official such as an Administrative Law Judge. 20 U.S.C.A. §1095 (a) (5). A guaranty agency is a nonprofit organization or state agency, such as the Authority, that "has an agreement with the United States Secretary of the Department of Education to administer a loan guarantee program[.]" N.J.A.C. 9A:10-1.3(a). New Jersey statutes and regulations require the Authority to purchase certain defaulted student loans and permit the Authority to seek garnishment of wages as one method of repayment. N.J.S.A. 18A:71C-6; N.J.S.A. 18A:72-16; N.J.A.C. 9A:10-1.14.

When a lender submits a claim for purchase by the Authority of a defaulted loan, the Authority first determines the legitimacy of the claim for purchase by the Authority of

a defaulted loan and ensures that all federal and state requirements for default aversion have been followed. If the Authority determines that “due diligence” has been met and purchases the loan from the lender, it then seeks to collect on the debt. N.J.A.C. 9A:10-1.4(b) (7) & (8); N.J.A.C. 9A:10-1.14(b).

Initially, the Authority bears the burden of proving by a preponderance of the competent, relevant and credible evidence the existence and amount of the debt. 34 C.F.R. §34.14(c) and (d); In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962. Here, the Authority produced adequate documentation establishing the existence of the debt and the amount currently in default. Since petitioner has sustained its burden of proof, respondent must demonstrate, by a preponderance of the evidence that either the debt does not exist, the amount is incorrect or that the loan should be discharged. 34 C.F.R. 34.14. Scala has not refuted the amount due. He seeks to avoid collection by pleading financial hardship.

In order to show financial hardship, Scala must prove by a preponderance of credible evidence the amount of the costs incurred for basic living expenses for himself exceed the income available from any source to meet those expenses. 34 C.F.R. § 34.24 (d). Next, the trier of fact compares the amounts that the borrower incurred for daily living expenses with national and local standards published by the Internal Revenue Service for families of the same size and similar income. 34 C.F.R. § 34.24 (e) (2). If the amount that the borrower spends for a type of daily living expense does not exceed the amount spent for that expense according to the national standards, then the expense will be accepted as reasonable. Otherwise, the borrower must prove that the amount claimed is reasonable and necessary. 34 C.F.R. §34.24 (e) (3) and (4).

In this matter, respondent’s gross monthly income is \$6,600. He did not supply his net monthly income. Despite his claim of financial hardship in his appeal letter, Scala has provided no evidence to support such a claim by a preponderance of credible evidence. He failed to prove why those expenses that exceed the national or local standard are reasonable and necessary. Although the undersigned considered the

documents submitted by Scala, his income and expense statement was a mere listing of figures that were unsupported by proofs. Therefore, Scala has not met his burden of proving that garnishment of his disposable pay would result in financial hardship.

ORDER

Based upon the foregoing, it is **ORDERED** that an administrative wage garnishment be issued directing respondent Scala's employer to deduct from his pay an amount no more than fifteen (15) percent of his disposable pay and remit this amount to the New Jersey Higher Education Student Assistance Authority until such time as the outstanding debt resulting from his student loan, including accrued interest, is paid.

This decision is final pursuant to N.J.A.C. 17:25-1.7 and 34 C.F.R. §682.410(b)(9) (N) (2003).

March 9, 2015

DATE
ljb/lr

JOAN BEDRIN MURRAY, ALJ

WITNESSES

For Petitioner

Russell P. Goldman, Esq.

For Respondent

No appearance

EXHIBITS

For Petitioner

P-A Agency Documents

For Respondent

Document Packet