

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 07645-14

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

Petitioner,

v.

JUAN FREIRE,

Respondent.

Richard W. Kreig, Esq., appearing for petitioner (attorneys)

Juan Freire, pro se,

Record Closed: July 9, 2014

Decided: July 10, 2014

BEFORE **KIMBERLY A. MOSS, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondent, Juan Freire (Freire or respondent), applied for and was granted a student loan for the purpose of paying tuition. He failed to make the proper installment payments when they became due and defaulted. Petitioner, the New Jersey Higher Education Student Assistance Authority (NJHESAA) was the guarantor of the loan and subsequently purchased it from the lender. NJHESAA seeks an order directing the employer of Friere 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.A. 1095a(a), 34 C.F.R. 682.410(b)(9)(i)(A) (2003).

Respondent acknowledges acquiring the loan and failing to make payments as required. However he asserts that a company has purchased the loan and he is making payments to that company.

On or about January 29, 2014, NJHESAA issued a Notice of Administrative Wage Garnishment to respondent. Respondent filed a timely appeal to the Notice of Administrative Wage Garnishment. The matter was transmitted to the Office of Administrative Law on June 16, 2014. Respondent requested a telephone hearing. The hearing was held on July 9, 2014. Respondent faxed a copy of his loan consolidation application to me on July 9, 2014. I closed the record on July 9, 2014.

FINDINGS OF FACT

Based upon the testimony of Freire, the affidavit of Janice Seitz, Program Officer with the NJHESAA and the testimony of Neal Ginsberg, student loan investigator, as well as the enclosures submitted therewith—that is, a copy of the loan application executed by petitioner, a copy of the voluntary monthly repayment arrangement and the computer information documenting the loan history, including interest accrued, I make the following **FINDINGS OF FACT**:

1. On or about October 9, 1998, respondent executed an application promissory note for a guaranteed student loan for the purpose of paying tuition to Computer Learning Center. As a result thereof Valley National Bank disbursed the sum of \$4,415.00.
2. On or about February 29, 1999, respondent executed an application

promissory note for a guaranteed student loan for the purpose of paying tuition to Computer Learning Center. As a result thereof Valley National Bank disbursed the sum of \$1,188.00

3. Pursuant to the terms of the promissory notes, monthly payments became due and owing.
4. Respondent defaulted on the aforesaid student loans by failing to make the required payments.
5. Petitioner is the state agency in New Jersey designated as a guarantor agency for federal and state funded student loans.
6. As a result of the default of respondent, petitioner was required to honor its guarantee.
7. At the time petitioner acquired the loan, on March 5, 2007, the amount of \$8,544.00 remained due and owing.
8. Pursuant to the terms of the loan, interest has continued to accrue.
9. On or about January 29, 2014, petitioner, acting pursuant to 20 U.S.C.A. 1095(a) (a) et seq. and 34 C.F.R. 682.410(b)(9)(i)(A), issued a Notice of Administrative Wage Garnishment directing that fifteen percent of respondent's disposable wages be remitted to petitioner until such time as the respondent's student loans have been repaid.
10. Respondent filed a timely appeal of NJHESAA's Notice of Administrative Wage Garnishment.
11. The amount of \$ 8851.00 is presently due and owing.

12. Respondent testified that his loans were consolidated and that he has made a payment to the company that consolidated the loans.
13. Respondent faxed me a copy of his Federal Direct Consolidation Loan Application and Promissory Note on July 9, 2014.
14. On the application he lists the estimated payoff amounts of the student loans as \$1624.00, \$4167, \$542.00 and \$980.00 for a total of \$7313.
15. Respondent's consolidation application was submitted to NelNet on June 11, 2014.

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.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. 1095a(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. 1095a(a)(5). A guaranty agency is a nonprofit organization or state agency, such as NJHESAA, 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 NJHESAA to purchase certain defaulted student loans and permit NJHESAA to seek garnishment of wages as one method of repayment. N.J.S.A. 18A:71C-6; N.J.A.C. 9A:10-1.14.

When a lender submits a claim for purchase by NJHESAA of a defaulted loan, NJHESAA first determines the legitimacy of the claim for purchase by NJHESAA of a defaulted loan and ensures that all federal and state requirements for default aversion have been followed. If NJHESAA determines that “due diligence” has been met and purchases the loan from the lender, NJHESAA 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, NJHESAA 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, NJHESAA 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. Freire seeks to avoid collection by pleading that his loans were consolidated and that he has made a payment to the company that consolidated the loans.

Freire has provided documentation he has applied for loan consolidation with NelNet on June 11, 2014. He listed the amounts of the student loans that he wanted consolidated as \$1,624.00, \$4167, \$542.00 and \$980.00 for a total of \$7313. The total loan amount that is due and owing as of July 9, 2014 is \$ 8851.00. As of July 9, 2014, petitioner has not received any payment from NelNet for respondent’s loans. In addition the amount of the consolidation loan that respondent applied for \$7,313 is \$1,538 less than the total amount that is due and owing.

Based on the facts adduced and the legal citations referred to above, I **CONCLUDE** that petitioner has met its burden to prove the existence and the amount of the claimed debt, and that repayment thereof is in default. Respondent has not shown that the proposed loan consolidation would repay the entire amount of the loan. In addition the loan application was filed on June 11, 2014 and petitioner has not received any payments from NelNet for respondent's loan.

ORDER

It is **ORDERED** that the total amount due and owing by respondent shall be the subject of a wage garnishment in an amount not to exceed 15% of respondent's disposable wages.

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

July 10, 2014

DATE

KIMBERLY A. MOSS, ALJ

Date Mailed to Parties:

ljb

EXHIBITS

For Petitioner

P-1 Agency Documents

For Respondent

Correspondence from NelNet regarding consolidation