State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. HEA 347-16

AGENCY DKT. NO. HESAA

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

Petitioner,

v.

MICHELLE COTA,

Respondent.

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

No appearance by Michelle Cota, respondent, pro se

Record Closed: March 1, 2016 Decided: April 5, 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, Michelle Cota, did not appear.

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 December 29, 2015. Respondent Michelle Cota challenges the garnishment. The Acting Director and Chief Administrative Law Judge (OAL) appointed the undersigned on February 17, 2016, to hear and decide the matter. Telephone hearing was scheduled for, and convened on March 1, 2016. Respondent was not available, but the hearing went forward notwithstanding, as required by law. The record closed at completion of the hearing on the same day.

ANALYSIS OF THE RECORD

Background:

Respondent**, Michelle Cota**, on November 13, 2006, executed a Federal Consolidation Loan Application and Promissory Note incorporating multiple loans from the lender, Sallie Mae Trust (Exhibits P-1, P-2). In time, respondent defaulted on this loan. The holder of the note then filed a claim for its principal

and interest with the statutory guarantor, NJHESAA, which sent a check to it in the amount of $112,230 on March 26, 2015 (Exhibits P-3, P-4). The agency established a schedule for repayment (Exhibit P-5), which respondent again failed to follow. Respondent therefore was notified that absent establishment of a repayment regimen being entered into within thirty days, garnishment would follow (Exhibits P-6, P-7).

In reply, respondent sought a hearing to contest the agency's decision, relying on the argument that to impose a garnishment would "result in an extreme financial hardship." Further, she asked that the hearing go forward by telephone. In reply, the agency forwarded to her a financial statement form which solicited information which could be evaluated in support of respondent's claim of hardship. The form was not returned.

At the time and date that hearing convened, respondent Cota was not available at the number supplied to the Office of Administrative Law. Today's decision therefore issues on the exclusive testimony and exhibits provided by the agency.

Findings of Fact:

I FIND that there are no material facts of record shown as being in dispute **.**

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).

Applying the Law to the Facts:

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 that (a) the debt exists in the amounts it has calculated, (b) that the debtor is delinquent, and (c) that the terms of repayment fairly fall within the maximum of 15 percent of respondent's disposable pay. This the agency has done. The testimony of its witness was credible and supported by the unchallenged proffer of Exhibits P-1 through P-9, now in evidence.

In response, aside from the written claim of hardship asserted within her application for a plenary hearing, respondent has neither complied with the agency request for information that would describe the details of her financial status, nor did she appear by telephone during the hearing provided. The ameliorating circumstances claimed by respondent in the Request for Hearing Form (Exhibit P-8) create an affirmative defense. It is respondent who therefore has the burden of persuasion to show by preponderating evidence that both facts and law stand for non-repayment. This showing would occur upon proof of a financial status showing extreme financial hardship. Respondent has not

submitted the financial data requested by the agency, and has not on this record otherwise provided proofs relevant to her defense.

Consequently, it is a fair construction of the enabling Act and implementing rules that the agency is now entitled to be made whole. To achieve such "wholeness," repayment should be compelled through garnishment. The garnishment should go forward by adding the amounts of the unpaid principal and capitalized interest to the existing monthly schedule of payments. These added amounts would be spread over the life of the loan to assure complete repayment of the entire loan within that number of years for which repayment was originally contracted, under requirement of the applicable statute.

Such an apportionment of payments may, or may not, reach the monthly cap of 15 percent of disposable wages which is suggested as most appropriate by the agency. That is as it may be. The decisive consideration is that the agency has not pointed to a legal compulsion in law or rules to immediately move to 15 percent monthly maximum when seeking repayment. Neither is there intent apparent in the Act or in the rules for such an automatic maximum to serve as a penalty.

DECISION AND ORDER

I ORDER, therefore, that the amount defined of record and sought by petitioner NJHESAA, plus accrued interest and fees, be recovered by garnishment consistent with the above reasoning. However, the monies deducted for any pay period shall be at no more than 15 percent of disposable pay. 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).

April 5, 2016
DATE

JOSEPH LAVERY, ALJ t/a

Date Received at Agency: _____

Date Mailed to Parties: _____

mph

LIST OF WITNESSES:

For petitioner:

Aurea Thomas

For respondent:

Michelle Cota, respondent, was not available by phone at the specified Hour

LIST OF EXHIBITS:

For petitioner NJHESAA:

P-1 Affidavit of Janice Seitz, executed November 18, 2013, with attachment
P-2 Federal Consolidated Loan Application and Promissory Note
P-3 FFELP Claim Form
P-4 Default Master Screen
P-5 Payment Screen: Michelle Cota
P-6 Correspondence Screen: Michelle Cota
P-7 Notice of Intent to Garnish (blank form)
P-8 Request for Hearing, Michelle Cota
P-9 Financial Statement form, blank

For respondent:

None