

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 10713-17

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

Petitioner,

v.

KEVIN SASLOWSKY,

Respondent.

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

Kevin Saslowsky, respondent, appearing on the papers pursuant to N.J.A.C.
1:1-14.8

Record Closed: October 6, 2017

Decided: October 13, 2017

STATEMENT OF THE CASE

Petitioner, the New Jersey Higher Education Student Assistance Authority (petitioner or Authority) seeks an order directing the employer of respondent, Kevin Saslowsky (respondent or Saslowsky), 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.

PROCEDURAL HISTORY

Respondent requested a hearing based on his written statement and the records in his loan file on March 10, 2017. The matter was transmitted to the Office of Administrative Law, where it was filed on July 20, 2017. Respondent failed to appear for a scheduled telephone prehearing conference on August 22, 2017. Thereafter, by letter dated August 28, 2017, the undersigned wrote to the parties and scheduled a hearing on the papers for September 12, 2017. The parties were also instructed to provide, by September 8, 2017, any supporting documents that may not have been included with the file transmitted by the petitioner. Petitioner provided a corrected certification of Janice Seitz on September 14, 2017, after it was discovered by the undersigned that the submitted certification was either missing a page or contained an error in the paragraph numbering. Since the revised affidavit was delivered two days after the day the matter was to be decided on the papers, by letter dated September 19, 2017, the undersigned gave the parties until October 2, 2017, to file any additional documents, and the record closed on October 6, 2017. No additional documents were submitted by either party.

STATEMENT OF THE ISSUE

The issue is whether petitioner has established, by a preponderance of the credible evidence, that it is entitled to an administrative wage garnishment.

FINDINGS OF FACT

Based on an affidavit of Janice Seitz, submitted on behalf of the petitioner, together with the supporting documentation—including a copy of the Federal Stafford Loan Master Promissory Note executed by respondent; HESAA Claim Form; computer information documenting the loan history, including interest accrued; and Respondent's Request for Hearing—I make the following **FINDINGS OF FACT**:

1. On or about November 14, 2007, the respondent executed a master promissory note for a guaranteed student loan for the purpose of paying tuition to William

Patterson University. As a result thereof, JP Morgan Chase Bank disbursed the sum of \$3,500.

2. Pursuant to the terms of the promissory note, payments became due and owing thereunder beginning on or about December 14, 2009.
3. Respondent defaulted on the aforesaid student loan by failing to make payments required thereunder.
4. Petitioner is the State agency in New Jersey designated as a guarantor agency for federal and state funded student loans.
5. As a result of the default of respondent, petitioner was required to honor its guarantee.
6. Pursuant to the terms of the loan, interest has continued to accrue. Collection costs have also been assessed.
7. On or about February 22, 2017, petitioner, acting pursuant 20 U.S.C.A. 1095(a) et seq. and 34 C.F.R. 682.410(b)(9), issued a Notice of Administrative Wage Garnishment to the respondent 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.
8. Respondent filed a timely appeal.
9. On or around March 10, 2017, Saslowsky requested a hearing based on his written statement and records in his loan file. His reasons for objecting to wage garnishment were: (1) respondent was involuntarily separated from employment and has not been re-employed continuously for twelve months; and (2) garnishment of 15% of his disposable pay would result in an extreme financial hardship.

10. As of approximately July 17, 2017, \$2,912.59 was due and owing on the loan. This amount includes the principal amount of the claim, interest accrued and \$538.84 in collection costs.
11. Saslowsky did not provide any written statement objecting to the wage garnishment. He also failed to provide any documents from the New Jersey Department of Labor Unemployment and Disability Insurance Services demonstrating his entitlement to unemployment compensations, nor a letter from his current employer indicating the date that he began work at his present job, as requested in the Request for Hearing form. If the respondent is not under the State's unemployment program, he also failed to provide a statement to that effect. Moreover, respondent did not provide a financial disclosure form or any documentation to support his claim of extreme financial hardship, as requested per the Request for Hearing form. Saslowsky's loan file does not contain any documents to support his objection to wage garnishment, and he failed to provide any documentation in anticipation of this hearing.

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:71A-1 to -34; 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. §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). The Authority is required to purchase certain defaulted student loans and 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 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, the Authority 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. Here, respondent has failed to meet this burden. While Saslowsky objected to the garnishment of his wages on the basis that he was involuntarily separated from his employment for twelve consecutive months, and that the proposed garnishment would result in an extreme financial hardship, he has failed to offer any evidence whatsoever to support these assertions.

Based on the facts adduced and the legal citations referred to above, I **CONCLUDE** that petitioner has proven the existence and the amount of the claimed

debt, and that repayment thereof is in default. Respondent failed to support his claims of involuntary separation from employment and absence of re-employment for twelve months, or extreme financial hardship which could offset the obligation he undertook voluntarily.

Based upon all of the foregoing, I **CONCLUDE** that petitioner has satisfied its burden.

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)(J) (2015).

October 13, 2017
DATE

SUSANA E. GUERRERO, ALJ

Date Received at Agency

Date Mailed to Parties:

jb

APPENDIX

EXHIBITS

For Petitioner:

P-1 Agency Documents

P-2 Corrected Affidavit of Janice Seitz

For Respondent:

None