

**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**DECISION**

OAL DKT. NO. HEA 14069-15

AGENCY DKT. NO. N/A

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

Petitioner,

v.

**DAVID BOTWIN,**

Respondent.

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**Philip Levitan, Esq.,** for petitioner (Levitan & Frieland, attorneys)

**David Botwin, pro se**

Record Closed: January 28, 2016

Decided: February 2, 2016

BEFORE **LELAND S. McGEE**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, the New Jersey Higher Education Student Assistance Authority (NJHESAA), seeks to obtain an administrative wage garnishment against Respondent, David Botwin, as a result of his failure to repay loans guaranteed by the NJHESAA.

### **PROCEDURAL HISTORY**

On or about April 9, 2015, Petitioner issued a Notice of Administrative Wage Garnishment to Defendant. Respondent submitted a timely Request for Hearing form and on September 1, 2015, the NJHESAA transmitted the matter to the Office of Administrative Law for determination as a contested case. A telephone Pre-hearing conference was held on October 29, 2015. A hearing was scheduled for December 29, 2015, which was adjourned at Respondent's request. A hearing was held on January 28, 2016, with Respondent participating by telephone, and the record closed.

### **FINDING OF FACT**

Based upon a review of the documents in evidence and the testimony, I **FIND** the following facts:

1. On or about October 15, 2006, Respondent executed an application/promissory note for a guaranteed student loan for the purpose of consolidation. As a result thereof, Sallie Mae disbursed the sum of \$28,164.69. (P-2)
2. Pursuant to the terms of the aforesaid promissory/installment note (s), payments became due.
3. Respondent defaulted on the aforesaid student loan by failing to make the payments required thereunder.
4. As a result of the default, NJHESAA was required to honor its guarantee. At the time NJHESAA acquired said loan(s), the amount of \$6,453.04 was due and owing. Interest continued to accrue pursuant to the promissory note. Collecting costs have been assessed pursuant to 34 C.F.R. §682.410(b)(2).
5. As of the date of the hearing, the total outstanding balance due on the loan is \$56,324.96. Interest continues to accrue on said amount, pursuant to the promissory note.
6. As a result of the default, the New Jersey Higher Education Student Assistance Authority was required to honor its guarantee. At the time NJHESAA acquired

said loan(s), the amount of \$44,111.44 was due and owing. Interest continued to accrue pursuant to the promissory note. Collection costs have been assessed pursuant to 34 C.F.R. §682.410(b)(2).

7. On or about April 29, 2015, NJHESAA, 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 to Respondent. (P-5)
8. Respondent timely filed an appeal of the Notice of Administrative Wage Garnishment.
9. Petitioner seeks an Order directing Respondent's employer to deduct from Respondent's wages \$356 monthly and remit same to NJHESAA until such time as the student loans have been repaid.
10. Respondent acknowledges the debt and default. He agrees to a garnishment of his wages in the total amount of \$356 per month.

### **DISCUSSION AND CONCLUSIONS**

The NJHESAA has the burden to proving the existence and the amount of the debt owed. This burden is met by including in the record, and making available to the debtor, the record showing the debt exists in the amount stated in the garnishment notice and the debt is currently delinquent. 34 C.F.R. Paragraph 34.14 (A). In this case, a true and correct copy of the promissory notes, as well as a computer printout of the history of the activity on the loan, has been submitted.

Accordingly, I **CONCLUDE** that the NJHESAA has met its burden of proving the existence of the debt and the amount of the debt owed. With respect to making the records available to the debtor, the Notice Prior to Wage Withholding issued on April 29, 2015, clearly states Respondent's opportunity to inspect and/or request copies of the NJHESAA's records relating to the debt. Accordingly, I **CONCLUDE** that the NJHESAA has met its burden of proving that the records were made available to Respondent. I further **CONCLUDE** that the requirements of the applicable regulations have been met and the NJHESAA has met its burden of proof as set forth therein.

Inasmuch as the NJHESAA has sustained its burden of proof, the Respondent must now demonstrate, by a preponderance of the evidence, that either the dept does not exist, the amount is incorrect or that the loan should be discharged for any one of the reasons set forth in the Request for Hearing form. See 34 C.F.R. Paragraph 34.14. Respondent does not dispute the debt, that he defaulted on the debt, or the amount of the debt.

Based on the foregoing, I **CONCLUDE** that, pursuant to the applicable statutory and regulatory provisions, an administrative wage garnishment is appropriate.

**ORDER**

I **ORDER** that an administrative wage garnishment against David Botwin shall be issued immediately directing the employer of David Botwin to deduct from his wages an amount equal to 356 per month of his disposable wages and to remit that amount to the New Jersey Higher Education Student Assistance Authority, until such time as Respondent's outstanding debt resulting from the above-described student loans has been repaid.

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

February 2, 2016 \_\_\_\_\_

DATE

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**LELAND S. McGEE, ALJ**

Date Received at Agency:

February 2, 2016 \_\_\_\_\_

Date Mailed to Parties:

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