

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 19280-16

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

Petitioner,

v.

TRISHA BUSS,

Respondent.

Philip I. Levitan, Esq., for petitioner (Fein, Such, Khan & Sheppard, P.C.,
attorneys)

Trisha Buss, pro se

Record Closed: March 3, 2017

Decided: April 17, 2017

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

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

PROCEDURAL HISTORY

On or about August 31, 2016, NJHESAA issued a Notice of Administrative Wage Garnishment to Ms. Buss. On September 28, 2016, Ms. Buss, filed a timely appeal to the Notice of Administrative Wage Garnishment, and requested a hearing by written statement. The matter was transmitted to the Office of Administrative Law on December 19, 2016. On January 25, 2017, a letter was transmitted to Ms. Buss stating that any additional documentation must be submitted to the OAL by March 3, 2016. Ms. Buss did not submit any additional documentation, and did not contact the OAL regarding the same.

The record was closed on March 3, 2016.

FINDINGS OF FACT

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

1. On or about September 24, 2000, the respondent executed a Federal Stafford Loan Master Promissory Note (Promissory Note) for guaranteed student loan(s) for the purpose of paying tuition to The College of New Jersey. As a result, thereof, Chase Manhattan Bank disbursed the sum of \$31,625.00 (P-1).
2. Pursuant to the terms of the aforesaid Promissory Note, payments became due and owing thereunder on the Guaranteed student loans (P-1).
3. Buss defaulted on the aforesaid student loan by failing to make the payments required thereunder (P-1).
4. As a result of the aforesaid default, the NJHESAA was required to honor its guarantee. At the time NJHESAA acquired said loan, the amount of \$38,847.84, 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) (P-1).

5. On or about August 31, 2016, 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 the respondent (P-1).
6. On September 28, 2016, Ms. Buss timely filed this appeal of NJHESAA's Administrative Wage Garnishment (R-1).
7. At the time that she filled this appeal, Ms. submitted a written authorization for her husband, Christopher Buss ("Mr. Buss") to speak on her behalf and a typed letter from Mr. Buss explaining why they could not make the payments due to the limited family income and family size (R-2).
8. In addition, the typed statement stated that between September 2011 and August 2015, Buss had an "agreement" of \$96 per month with Sallie Mae and Navient. Apparently in August 2015, there was an increase in the monthly payment of \$96. Buss also mentions a "temporary" forbearance agreement with Navient that was apparently entered into in August 2015 (R-2).
9. The statement also explained that Ms. Buss is the only person employed in her household, as her husband is a minister and does not appear to collect a salary (R-2).
10. Ms. Buss did not provide a financial statement to NJHESAA containing her monthly income and expenses.
11. On December 14, 2016, NJHESAA provided copies of the loan documents and account information to Ms. Buss (P-2).
12. By correspondence dated January 25, 2017, Ms. Buss was instructed to submit her written documentation to the OAL in connection with her defense that the administrative wage garnishment would result in an extreme financial hardship by March 3, 2017.

13. Buss did not submit a written statement or documentation by March 3, 2017, or at any time thereafter. However,
14. Pursuant to the aforesaid statute and regulations, NJHESAA seeks an Order directing the respondent's employer to deduct fifteen percent (15%) of the respondent's disposable wages and remit the same to the New Jersey Higher Education Student Assistance Authority until such time as Buss's student loans have been repaid (P-1).
15. Buss acknowledges the debt and default as she does not dispute the same (R-1).

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:72-1 to 21; 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. 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.

The NJHESAA has the burden of proving the existence and amount of a debt. 34 C.F.R. § 34.14(a)(1) (2015). The NJHESAA meets this burden by including in the record, and making available to the debtor on request, records to show that the debt exists in the amount stated in the garnishment notice, and that the debt is currently delinquent. 34 C.F.R. § 34.14(a)(2) (2015). If the debtor disputes the existence or the amount of the debt, the debtor must prove by a preponderance of the credible evidence that the debtor does not owe the debt; that the amount the NJHESAA claims is owed is incorrect; or that debtor is not delinquent with payment. 34 C.F.R. § 34.14(b) (2015).

If the debtor objects that the proposed garnishment rate would cause financial hardship, the debtor bears the burden of proving by a preponderance of the credible evidence that “withholding the amount of wages proposed in the notice would leave [the debtor] unable to meet the basic living expenses of [the debtor] and [the debtor’s] dependents.” 34 C.F.R. § 34.14(c)(1) (2015).

In this case, the debtor, Ms. Buss, submitted a written statement when she requested a hearing and consented to the records in her loan file to object that the proposed garnishment rate would cause financial hardship (R-1).

Ms. Buss did not provide a financial statement to NJHESAA containing her monthly income and expenses. Instead, she submitted a written authorization for her husband Mr. Buss to communicate on her behalf, and a typed letter explaining why Ms. Buss could not make the payments due to her income and family size.¹ In the letter, Mr. Buss explains that they have a family of five with one income from his wife, who is a teacher, and that Mr. Buss is a pastor, and does not mention any salary.

In addition, the statement reflects that between September 2011 and August 2015, Ms. Buss had an “agreement” of \$96 per month with Sallie Mae and Navient. Apparently in August 2015, there was an increase in the monthly payment of \$96. Mr. Buss also mentions a “temporary” forbearance agreement with Navient that was entered into in August 2015. The statement does not contain a proposed monthly payment amount from Ms. Buss, or total family expense.

It appears from the written statement provided by Buss that a wage garnishment of fifteen percent would cause a financial hardship to her and her family.

Given my findings of fact and this discussion of the law, **I CONCLUDE** that the NJHESAA has met its burden of proving the existence of the debt and the amount of the debt owed, by including in the record, and making available to Ms. Buss, records to

¹ Buss does not provide an amount for her monthly income or expenses.

show that the debt exists in the amount stated in the garnishment notice, and that the debt is currently delinquent.

In addition, **I CONCLUDE** that Ms. Buss has met the burden of proving by a preponderance of the credible evidence that the wage garnishment of fifteen percent would result in an extreme financial hardship on Ms. Buss and her family.

Therefore, **I CONCLUDE** that an administrative wage garnishment of ten percent of Ms. Buss's current disposable wages is appropriate under the applicable statutory and regulatory scheme and that such an administrative wage garnishment should issue.

ORDER

Given my findings of fact and conclusions of law, **I ORDER** that an administrative wage garnishment be issued against Buss directing her employer to deduct from her wages an amount equal to ten percent of her disposable wages and to remit that amount to the NJHESAA until the loan is repaid.

This decision is final under 34 C.F.R. § 682.410(b)(9)(i)(J) (2015).

April 17, 2017 _____

DATE

JULIO C. MOREJON, ALJ

Date Received at Agency:

April 17, 2017 _____

Date Mailed to Parties:

lr _____

EXHIBITS

For Petitioner

- P-1 Affidavit of Janice Seitz, on behalf of NJHESAA, and documents referenced therein
- P-2 Letter to Respondent from Agency dated December 14, 2016, providing account information.

For Respondent

- R-1 Request for Hearing
- R-2 Written authorization and typed statement