

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE UNIVERSITY OF ALASKA**

In the Matter of the _____)
R. K.) OAH No. 05-0704-PFE
_____)

DECISION & ORDER

I. Introduction

R. K. submitted a Notice of Defense requesting a hearing on the University of Alaska’s claim against his 2005 permanent fund dividend (PFD).¹ The University referred the matter to the Office of Administrative Hearings and submitted documentation supporting its position that Mr. K. owes the University \$328.29 stemming from fees associated with Mr. K.’s 2003-2004 Academic Year Housing Agreement (Housing Agreement).² A hearing on the matter was held October 28, 2005. At the hearing Mr. K. asserted that he does not owe the University anything, and complained of the manner in which the University treated him.³

The University has shown that it is more likely than not that Mr. K. owes the University \$328.29, that his account is in default in that amount, and that he was properly notified of the University’s intention to take that amount from his 2005 PFD. The University, therefore, is entitled to \$328.29 of Mr. K.’s 2005 PFD.

II. Facts

On March 26, 2003, R. K. signed a Housing Agreement with the University of Alaska Southeast.⁴ The Housing Agreement states that the “agreement remains in effect from August 27, 2003, to May 2, 2004[,]” and that:

All people that move out of housing before the completion of this agreement will be charged an agreement break fee of \$400. . . . Appeals to this charge must be addressed in writing to the Residence Life Manager within 30 days of move-out.^[5]

The Housing Agreement also states that a \$40.00 improper checkout fee will be assessed if certain procedures are not followed.⁶ Checkout procedures listed in the Housing Agreement include:

¹ August 17, 2005 Notice of Defense.

² September 23, 2005 Summary of University of Alaska Claim Upon R. M. K. PFD.

³ October 28, 2005 Hearing Recording.

⁴ March 26, 2003, 2003-2004 Academic Year Student Housing Agreement at 4.

⁵ *Id.* at 1.

⁶ *Id.* at 4.

1. Contacting a staff member at least 24 hours in advance to schedule a checkout appointment.
2. Turning in my key(s) to the staff member at the time of my checkout appointment.
3. Leaving a forwarding address with the Lodge desk.^{17]}

Mr. K. signed a Student Housing Close-Out/Status Change/Charge Form (Charge Form) on September 14, 2003.⁸ On the Charge Form “\$40” is hand-written in a blank near the words “Improper checkout (\$40),” “400” is hand-written across from the words “Contract break fee (\$400),” and “440.00” is written across from the word “TOTAL.”⁹ The Charge Form does not explain why the \$40.00 fee was applied.

A Transaction Summary Report from the University states that Mr. K. owes the University \$328.29.¹⁰ On April 18, 2005, the University sent Mr. K. notice that he was in default in the amount of \$328.29 and that the University would take his PFD if he did not pay the full amount.¹¹ On August 1, 2005, the University sent Mr. K. notice that it had filed a claim against his PFD and included a Notice of Defense form with which he could request a hearing.¹²

Mr. K. returned the Notice of Defense form to the University after checking the box on the form stating, “[t]he amount I owe is less than the amount claimed from my permanent fund dividend.”¹³ Mr. K. included with his Notice of Defense a written statement saying, “[r]efusal by the university to send an accounting of my expenditures while there and filing a claim on my PFD is unconscionable.”¹⁴ Mr. K.’s statement also expressed dissatisfaction with the University’s handling of student accounts.¹⁵

At the hearing on October 28, 2005, Mr. K. appeared on his own behalf and Ardith Lynch represented the University.¹⁶ Roxy Felkl, of University of Alaska Southeast Activities and Housing, testified that Mr. K. entered into a Housing Agreement

⁷ *Id.*

⁸ September 14, 2003 Student Housing Close-Out/Status Change/Charge Form.

⁹ *Id.*

¹⁰ August 6, 2005 Transaction Summary Report. Application of several credits to Mr. K.’s account reduced the amount that he owes to the University.

¹¹ April 18, 2005 Letter from Paul Empson.

¹² August 1, 2005 Letter from Thomas F. McBrien.

¹³ August 17, 2005 Notice of Defense.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ October 28, 2005 Hearing Recording.

and left student housing prior to completion of that agreement.¹⁷ Ms. Felkl said that she has no record that Mr. K. appealed the \$400.00 agreement break fee to the Residence Life Manager. Additionally, Ms. Felkl stated that a \$40.00 improper checkout fee is typically assessed on students who either miss appointments with, or fail to meet with, University Community Advisors.¹⁸ Ms. Felkel did not reveal any personal knowledge of the specific reason that Mr. K. was assessed a \$40.00 charge.¹⁹ Paul Empson of the University's Financial Services testified that the current balance on Mr. K.'s account was then \$328.29.²⁰ Documentation of Mr. K.'s debt to the University was entered into evidence.²¹

At the hearing Mr. K. took the position that he should not owe the University anything, and disagreed with the \$400.00 cancellation fee and the \$40.00 improper checkout fee the University had charged him.²² He expressed general dissatisfaction with the manner in which the University conducts its business, and said that the improper checkout fee was a way for the University to "snag a few extra dollars off of students."²³ Mr. K. did not assert with any specificity that any of the fees charged to him were improper under the terms of the Housing Agreement. He did not address the assertion he made in his Notice of Defense that the University's claim against his PFD was unconscionable.²⁴

III. Discussion

The University may take an individual's PFD if any charge to that individual for tuition or fees is in default.²⁵ Once the University has provided proper notification of its claim against an individual's PFD, the individual has the burden of refuting the University's claim.²⁶ The

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* Documents entered into evidence include: (1) 2003-2004 Academic Year Housing Agreement signed by Mr. K., (2) Student Housing Close-Out/Status Change/Charge Form signed by Mr. K., (3) Transaction Summary Report showing a \$328.29 balance on Mr. K.'s account, (4) Past Due Notices sent to Mr. K.

²² October 28, 2005 Hearing Recording.

²³ *Id.*

²⁴ A contract's terms sometimes can be unenforceable as "unconscionable," but Mr. K.'s Notice of Defense did not assert that the contract's terms are unconscionable or argue that at the hearing. Rather, he complained that University staff had treated him badly in their dealings with him. That kind of generalized complaint does not raise an unconscionable contract issue. In any event, since Mr. K. did not pursue the conscionability argument at the hearing, he abandoned it.

²⁵ AS 14.40.251(a); AS 43.23.073(a).

²⁶ AS 43.23.073(c).

individual may do this by showing one of only three things: (1) the University did not send a notice of default in compliance with the law, (2) the notice of default has been rescinded, or (3) “the amount owed by the individual is less than the amount claimed from the [PFD].”²⁷ Mr. K. claims the third, that the amount he owes the University is less than the amount claimed from his PFD.²⁸ Mr. K., therefore, initiated a hearing process by filing a Notice of Defense and assumed the burden of proving that he owes less money to the University than the University is claiming from his PFD.

The University was justified in charging Mr. K. a \$400.00 agreement break fee. Mr. K.’s signature on his Housing Agreement shows that Mr. K. agreed to the contract’s provisions concerning charges he would have to pay to the University if he moved out of student housing prior to completion of the agreement.²⁹ Ms. Felkl’s testimony, as well as Mr. K.’s signature on his Charge Form, indicate that Mr. K. moved out of student housing prior to completion of the Housing Agreement.³⁰ Mr. K. did not specifically dispute the \$400.00 fee in his testimony or Notice of Defense.³¹

The University was also justified in charging Mr. K. a \$40.00 improper checkout fee. Mr. K.’s Housing Contract shows what checkout procedures are to be followed and states that a \$40.00 improper checkout fee will be applied if they are not.³² The Charge Form signed by Mr. K. did not specify why his checkout was improper,³³ and Ms. Felkl’s testimony revealed nothing about why the charge was applied.³⁴ Had Mr. K. disputed this fee it is likely that the University would not be justified in claiming it. The burden was on Mr. K., however, to refute the University’s claim and show that the fee should not have been applied. Mr. K.’s general complaints about the checkout fee the University charged him did not show that the fee was improper under the terms of the Housing Agreement he signed.³⁵

²⁷ *Id.*

²⁸ August 17, 2005 Notice of Defense; October 28, 2005 Hearing Recording. Mr. K. believes that he owes the University nothing. His reason for requesting a hearing thus falls into the “amount I owe is less than the amount claimed from my permanent fund dividend” category allowed by AS 43.23.073(c)(3).

²⁹ March 26, 2003, 2003-2004 Academic Year Student Housing Agreement.

³⁰ October 28, 2005 Hearing Recording; September 14, 2003 Student Housing Close-Out/Status Change/Charge Form.

³¹ October 28, 2005 Hearing Recording; August 17, 2005 Notice of Defense.

³² March 26, 2003, 2003-2004 Academic Year Student Housing Agreement.

³³ September 14, 2003 Student Housing Close-Out/Status Change/Charge Form.

³⁴ October 28, 2005 Hearing Recording.

³⁵ Mr. K.’s complaints about the University did not advance the assertion in his Notice of Defense that the University’s claim on his PFD was unconscionable. There is no requirement in AS 43.23.073 that the University

Mr. K. owes the University \$328.29. Mr. Empson's testimony³⁶ and the Transaction Summary Report submitted by the University³⁷ show that, after applying several credits to the account, Mr. K.'s balance on October 28, 2005, was \$328.29. The University's letters to Mr. K., including an April 18, 2005, Notice of Default,³⁸ provided Mr. K. with proper notice of the University's intent to take his PFD.

The University is entitled to take from Mr. K.'s PFD only as much of the amount of the charges owed by Mr. K. to the University as are in default.³⁹ The amount claimed by the University from Mr. K. is less than the amount of Mr. K.'s 2005 PFD.⁴⁰ Thus, the University is entitled to only \$328.29 of Mr. K.'s PFD.

IV. Conclusion

The University has shown that, more likely than not, Mr. K.'s account with the University is in default in the amount of \$328.29, and the University has provided Mr. K. with proper notification of its intent to make a claim on his PFD. The University, therefore, is entitled to \$328.29 of Mr. K.'s 2005 PFD.

DATED this 26th day of June, 2006.

By: Signed _____
Terry L. Thurbon
Chief Administrative Law Judge

provide a detailed explanation of the charges it seeks to claim from an individual's PFD. Mr. K. was provided with a general explanation of charges to his account in Past Due Notices sent to him by the University.

³⁶ October 28, 2005 Hearing Recording.

³⁷ August 6, 2005 Transaction Summary Report.

³⁸ April 18, 2005 Letter from Paul Empson.

³⁹ See AS 43.23.073.

⁴⁰ The 2005 PFD amount was \$845.76. See Attachment 1, pp. 1-2.

Adoption

The undersigned, on behalf of the University of Alaska and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this _____ day of _____, 2006.

By: _____
Signature

Name

Title

[This document has been modified to conform to technical standards for publication.]

See following adoption numbers 2 and 3.

Non-Adoption Options

1. The undersigned, on behalf of the University of Alaska and in accordance with AS 44.64.060, declines to adopt this Decision and Order, and instead orders under AS 44.64.060(e)(2) that the case be returned to the administrative law judge to

take additional evidence about _____;

make additional findings about _____;

conduct the following specific proceedings: _____.

DATED this _____ day of _____, 2006.

By: _____

Signature

Name

Title

2. The undersigned, on behalf of the University of Alaska and in accordance with AS 44.64.060(e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows:

The University is entitled to \$329.89 of Mr. K's 2005 and future Permanent Fund Dividends until paid in full.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 1st day of August, 2006.

By: *Signed* _____

Signature

John R. Pugh

Name

Chancellor

Title

3. The undersigned, on behalf of the University of Alaska and in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

The University has shown that it is more likely than not that Mr. K. is in default in the \$328.89 he owes and was properly notified of the University's intent to take that amount from his 2005 and future PFDs.

This finding is based on the April 18, 2005 Notice of Default, the August 1, 2005 Notice of PFD Claim and the Notice of Defense form.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 1st day of August, 2006.

By: Signed
Signature
John R. Pugh
Name
Chancellor
Title

4. The undersigned, on behalf of the University of Alaska and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this _____ day of _____, 2006.

By: _____
Signature

Name

Title