

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
FROM THE ALASKA COMMISSION OF POSTSECONDARY EDUCATION**

IN THE MATTER OF )  
 )  
T. K. B. ) OAH No. 08-0591-PFE  
 ) Agency No. 9340597645  
\_\_\_\_\_)

**DECISION**

**I. Introduction**

T. K. B. submitted a Notice of Defense requesting a hearing on the Alaska Commission on Postsecondary Education’s claim against his 2008 permanent fund dividend (PFD).<sup>1</sup> The matter was referred to the Office of Administrative Hearings and a hearing was held on January 12, 2009. Mr. B. participated in person; Julie Banfield, a Due Diligence Administrative Officer for the commission, participated by phone and represented the commission staff. Based on the agency record, as supplemented by additional evidence presented at the hearing, the commission’s claim against Mr. B.’s 2008 PFD is valid. His debt exceeds the amount of the 2008 PFD.

**II. Facts**

The Commission’s computer records show that as of September 16, 2008, Mr. B.’s full accelerated unpaid balance on his student loans was \$47,553.97.<sup>2</sup> The commission sent Mr. B. a Notice of Initial Default as required by AS 14.43.145(b).<sup>3</sup> On August 27, 2008, Mr. B. signed a Notice of Defense requesting a hearing on the matter of the commission’s claim against his 2008 PFD. Mr. B. checked the box on the Notice of Defense form asserting that the amount “ACPE claimed from my Alaska PFD is greater than the full accelerated unpaid balance on my loan(s).”<sup>4</sup> The amount of the 2008 PFD was \$3,269.

At the formal hearing, Mr. B. argued that he owed nothing on the loans because they had been discharged<sup>5</sup> in his 1999 federal bankruptcy proceeding. Mr. B.’s October 15, 1999, Discharge of Debtor, ordered that:

1. Mr. B. was released from all dischargeable debts.

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<sup>1</sup> August 27, 2008 Notice of Defense at 1.

<sup>2</sup> October 29, 2008 Affidavit of Julie M. Banfield at ¶ 5.

<sup>3</sup> In his Notice of Defense, Mr. B. did not raise an issue concerning notice of default. *See also* October 29, 2008 Affidavit of Julie M. Banfield at ¶ 4.

<sup>4</sup> August 27, 2008 Notice of Defense at 1.

<sup>5</sup> When a debt is discharged it is no longer legally enforceable against the debtor. 11 USC § 524(a).

2. Any judgment obtained in any court against him is null and void with respect to:
  - (a) debts dischargeable under 11 U.S.C. § 523;
  - (b) debts alleged “to be excepted from discharge under clauses (2), (4), (6) and (15) of 11 U.S.C. § 523(a)”;
  - (c) other debts discharged by the bankruptcy court.
3. All creditors whose debts are discharged are enjoined from taking action to collect on those debts.<sup>6</sup>

Upon receipt of the bankruptcy discharge notice in 1999, the commission staff informed Mr. B. that, under 11 USC § 523(a)(8)(a), his student loans were excepted from discharge and still owing.<sup>7</sup> Matthew Fishel, Claims Specialist for the commission, checked Mr. B.’s account and testified that Mr. B. made his last voluntary payment on his debt to the commission on December 27, 2001, and that as of the date of hearing, his full accelerated balance was \$48,847.19. When asked at hearing if the debt was not discharged, would the amount owing exceed \$3,269, Mr. B. responded “Oh, I suppose so.”

### **III. Discussion**

B.’s appeal raises two issues: (1) was Mr. B.’s student loan debt discharged in his 1999 federal bankruptcy proceeding and (2) if his student loan debt was not discharged, can the commission claim his 2008 PFD?

#### *A. Mr. B.’s Student Loans Were Not Discharged In Bankruptcy*

Mr. B. obtained an order releasing him from all “debts dischargeable under 11 USC § 523” and discharging certain debts that, without an order, would otherwise be statutorily excepted from discharge under 11 USC § 523(a).<sup>8</sup> Student loan debt is statutorily excepted from discharge under 11 USC 523(a)(8)(A) unless the debtor can establish to the satisfaction of the federal bankruptcy court, that repaying the loan creates a hardship.<sup>9</sup> Mr. B. acknowledged that there had been no finding of hardship by the bankruptcy judge nor was his student loan debt

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<sup>6</sup> *In re* T. K. B., Case No. 99-00566, Discharge of Debtor (October 15, 1999).

<sup>7</sup> October 22, 1999 Letter to Mr. Barr from Commission Staff, Exhibit 4.

<sup>8</sup> *In re* T. K. B., Case No. 99-00566, Discharge of Debtor (October 15, 1999).

<sup>9</sup> 11 USC § 523 (a)(8)(A) provides in part:

(a) A discharge under section 727...does not discharge an individual debtor from any debt—  
(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor’s dependents, for—  
(A) (i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution....

listed as a discharged debt. Mr. B. reasons that since he had to file bankruptcy and has since defaulted on his loans, he has established a *prima facie* case that failure to discharge the debt created a hardship. Whether these facts present a *prima facie* case of hardship is a fact question to be answered in a federal bankruptcy law proceeding; the presence or absence of hardship under federal law will not be resolved in this state administrative proceeding. Therefore, without a bankruptcy order specifically discharging his student loan debt, Mr. B. has failed to present persuasive evidence that his debt to the commission was discharged in his 1999 bankruptcy proceeding.

B. *The Commission Can Claim Mr. B.'s 2008 PFD*

The commission has legal authority to take a student loan borrower's PFD when the loan is in default.<sup>10</sup> Once the commission has provided proper notification of its claim against a borrower's PFD, the borrower has the burden of refuting the commission's claim.<sup>11</sup> The borrower may do this by showing one of only three things: (1) the commission 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.<sup>12</sup> Mr. B.'s Notice of Defense claimed the third.<sup>13</sup>

Mr. B. reasoned that since his loans were discharged in bankruptcy the commission could no longer collect on his debt. The amount he asserts was owed, \$0.00, was less than the amount of the 2008 PFD, \$3,269. However, the student loan debt was not discharged and Mr. B. has not challenged the division's assertion that his outstanding debt exceeds the amount of the 2008 PFD. Therefore, the commission properly claimed Mr. B.'s 2008 PFD.

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<sup>10</sup> AS 14.43.145(a); AS 43.23.067.

<sup>11</sup> AS 43.23.067(c).

<sup>12</sup> *Id.*

<sup>13</sup> September 4, 2008 Notice of Defense.

#### **IV. Conclusion**

The commission properly claimed Mr. B.'s entire 2008 PFD because the amount he owed the commission on the defaulted loans exceeded the amount of 2008 PFD.

DATED this 16th day of January, 2009.

By: Signed  
Rebecca L. Pauli  
Administrative Law Judge

#### **Adoption**

The undersigned, on behalf of the Alaska Commission on Post Secondary Education and in accordance with AS 44.64.060, adopts this Decision 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 18th day of February, 2009.

By: Signed  
Signature  
Diane Barrans  
Name  
Executive Director  
Title

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