

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

IN THE MATTER OF)
)
 C. L.) OAH No. 10-0368-PFE
_____)

DECISION

I. Introduction

C. L. appeals the University of Alaska's, (the University) claim against his future Alaska Permanent Fund Dividends (PFDs).¹ A telephonic hearing was held on August 18, 2010. Mr. L. and the University participated. Roz Spiker, Accounting Manager, and Barbara Farmer, Collections Officer, represented the University. Because Mr. L. has not met his burden of proof under AS 43.23.073(c), his appeal is denied and the University is entitled to claim a maximum of \$2,111 for unpaid tuition and fees against Mr. L.'s future PFDs until the claim is satisfied.

II. Facts

On June 25, 2009, Mr. L. registered online for several classes.² Over the next week he continued to adjust his schedule using the University's online system to drop classes when he realized he did not meet all the prerequisites or have the required instructor approval.³ Eventually, he decided on three classes totaling ten credits: Japanese I, Pre-Algebra and Beginning Alaska Native Art. All classes were for the fall 2009 semester. The deadline for a full refund of tuition and fees to students who withdraw was August 28, 2009. Fifty percent refunds of tuition only were allowed for students who withdrew by September 4, 2009. Tuition and fees totaled \$1,811.⁴

After registration but before the start of the semester, there was a death in Mr. L.'s family and Mr. L. returned to Bethel.⁵ When Mr. L. realized he would not be returning to Anchorage, he called the University's administrative offices and informed the person who answered the phone that he was cancelling his classes.⁶ Mr. L. has no notes of the conversation, he could not recall the name of the individual with whom he spoke, nor could he

¹ Exh. 1.
² Exh. 8; L. Testimony.
³ *Id.*
⁴ Exh. 4.
⁵ L. Testimony.
⁶ *Id.*; Exh. 1.

recall an approximate date. At hearing, Mr. L. narrowed the time frame to the end of July or the first part of August 2009. The University has no record of Mr. L. withdrawing from or attempting to withdraw from the class.⁷ The University assessed late fees increasing the total amount due by \$300 to \$2,111.⁸

Mr. L. explained that the person he talked to did not tell him he could not withdraw over the phone but that he needed to withdraw online or in writing. Mr. L. testified that had he known, he would have complied. He thought after calling that he would be withdrawn from school.⁹ Mr. L. testified that he never looked at printed copy of the school's catalog, but he did view the school's website when registering. However, he did not recall looking at the pages on tuition, fees, and payments.

The mailing and emailing addresses the University has on file for Mr. L. are his mother's.¹⁰ He agreed that those were the addresses he would have provided to the University at the time of registration. The University sent Mr. L. electronic notices regarding his account using the email address he provided, but he did not receive the notices.¹¹ Nor did he receive the May 14, 2010 Notice of Default that was sent to his mother's address.¹² However, Mr. L.'s mother did forward to Mr. L. the Notice of PFD Claim dated June 25, 2010 that was sent by certified mail.¹³ Mr. L. timely filed his Notice of Defense and Request for Hearing.¹⁴ The Notice of Defense identifies the three defenses permitted by law:

1. the University did not send a Notice of Default as required by law,
2. the Notice of Default was rescinded by the University, or
3. the amount owed is less than the amount claimed from the PFD.

Mr. L. claimed the first defense.¹⁵ At hearing it became apparent that he was also claiming the third, that the amount owed was less than the amount claimed, because he believed he should not be charged under the circumstances. On his Notice of Defense Mr. L. wrote that he "moved to the village and had no way back. So I called UAA and cancelled my classes.

⁷ Farmer Testimony.

⁸ Exh. 2.

⁹ L. Testimony.

¹⁰ *Id.*

¹¹ Exh. 5; L. Testimony.

¹² *Id.*

¹³ L. Testimony.

¹⁴ *Id.*; Exh. 1.

¹⁵ Exh. 1.

Then was told after the school year was done that I had to do it [withdraw] over the computer.”¹⁶ Mr. L. reasons he should not be required to pay for classes he did not attend and for which he made a good faith attempt to withdraw from prior to the start of the term. He agrees that had he attended classes, he would have owed the University \$2,111.

The University emphasized that it requires withdrawals to be completed online or in writing, and that it will not accept a verbal withdrawal. This policy is contained in its catalog which is available online and in print. Because it had no withdrawal from Mr. L., it did not fill his slot in the class.

III. Discussion

Alaska law provides that tuition, fees and other charges to an individual by the University of Alaska are in default if not paid within 180 days.¹⁷ When an individual is in default to the University, the University is allowed to take the individual’s PFD.¹⁸ Once the University has provided proper notification of its claim against the individual’s PFD, the individual has the burden of refuting the University’s claim.¹⁹ The 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.²⁰ Mr. L. claims the first and third, that the University did not send a notice of default in compliance with the law and that it did not have the legal authority to garnish his PFD because the amount claimed from his PFD is greater than the amount owed, if any. To prevail, Mr. L. would need to establish by a preponderance of the evidence that he had timely withdrawn from the classes or that the service of the notice of default was flawed.

A. Notice of Default

The University is required to send a Notice of Default “to the individual’s most recent address provided to the university by the individual or obtained by the university.”²¹ Mr. L. agrees that it is likely he would have provided the University with his mother’s mailing and email addresses. The Notice of Default is addressed to the mailing address provided by Mr. L.. Therefore, Mr. L. has not established by a preponderance of the evidence that the University failed to send the Notice of Default as required by law and the first defense fails.

¹⁶ *Id.* at 1.

¹⁷ AS 14.40.251(a).

¹⁸ *Id.*; AS 43.23.073.

¹⁹ AS 43.23.073(c).

²⁰ *Id.*

B. *Mr. L. Owes the Amount Claimed.*

It is undisputed that Mr. L. signed up for the classes in question, the only issue is whether he timely withdrew. The University's policies are detailed in the University catalog, which is readily available both in print and online. While it may be true that a person could register online without ever seeing the University's policies on payment of tuition and fees,²² once Mr. L. was accepted as a student at the University and he successfully registered for class, he is expected to be aware of the University's policies on tuition payment and refund.²³ Per published University policy available to Mr. L. in hard copy and online, to be effective a withdrawal must be in writing or online using a student's unique personal identification number.

Regardless, Mr. L. has not established that it is more likely than not that he did call the University and request withdrawal. The only evidence in support of his claim is Mr. L.'s defense is his own testimony. Mr. L. had no notes of the conversation, he could not identify the person with whom he spoke, nor did he make any attempt to confirm that he had indeed withdrawn from the classes. The University presented the testimony of Ms. Farmer and Ms. Spiker in an attempt to establish that it was against University policy to accept verbal withdrawals and that if anyone did call, the person answering the phone would not have accepted a verbal withdrawal. Neither Ms. Spiker nor Ms. Farmer established that they had personal knowledge of what University employees were instructed regarding verbal withdrawals or telephone contact during the time in question. However, their testimony is corroborated by the University's written policy and for this reason is given more weight than Mr. L.'s uncorroborated testimony. Therefore, Mr. L. is liable for the full amount of the claim.

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²¹ 14.40.251(b).

²² The record does not establish whether an individual registering online must check a box certifying they have read and understand the University's policy on adding and dropping classes once registered. Nor where verified and authenticated screen print outs showing what Mr. L. would have seen provided.

²³ *In re J. S.*, OAH No. 07-0521 PFE (February 11, 2008) at 3 ("A student who declines to read the university's policies on tuition payment and refunds does so at his own peril.")

IV. Conclusion

C. L. failed to meet his burden of proof that the service of the Notice of Default was defective or that the amount owed is less than the amount claimed. The University of Alaska is entitled to claim a maximum of \$2,111 against one or more of Mr. L.’s Alaska Permanent Fund Dividends until the claim is satisfied by collection from dividend or otherwise.

DATED this 20th day of September, 2010.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

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 20th day of October, 2010.

By: Signed
Signature
Fran Ulmer
Name
Chancellor
Title

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