

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

IN THE MATTER OF)
)
S. W.) OAH No. 10-0371-PFE
_____)

DECISION

I. Introduction

S. W. appeals the University of Alaska’s (the University) claim against her future Alaska Permanent Fund Dividends (PFDs).¹ A telephonic hearing was held on August 26, 2010. Ms. W. and the University participated. Roz Spiker, Accounting Manager, and Barbara Farmer, Collections Officer, represented the University. Because Ms. W. has not met her burden of proof under AS 43.23.073(c), her appeal is denied and the University entitled to claim a maximum of \$616 against Ms. W.’s future PFDs until the claim is satisfied.

II. Facts

Ms. W. has been a student attending the University since fall 2007 when she was admitted to the College of Arts and Sciences with double majors of Biological Science and Chemistry. The amount at issue was incurred in association with the fall 2009 semester.

Ms. W. initially registered for the fall 2009 term on April 6, 2009. Over the next five months Ms. W. added and dropped classes. The University’s Student Course Registration Audit Report (audit report) for Ms. W.’s fall 2009 semester is eight pages long and reveals that her account was accessed 200 times between April 6, 2009 and September 3, 2009 for purposes of verifying, adding and dropping classes.² The audit report tracks activity on Ms. Welch’s account and notes whether the activity was initiated by Ms. W. or a University employee.

August 28, 2009 was the deadline for a full refund of tuition and fees to students who withdrew by that date. Fifty percent refunds of tuition– but not fees – were allowed for students who withdrew by September 4, 2009. Some add/drops were completed by Ms. W. online and some were written requests completed by University Staff.³ The subject of this appeal is a written add/drop request for a Math 200 course which Ms. W. claims was completed during the 100% tuition refund period, but which the University has no record of receiving. It is

¹ Exh. 1.

² Exh. 8. Exhibit 8 consists of 15 pages in the record; however there are only eight “report” pages. The dates of account activity are as follows: April 6, 2009; April 8, 2009; July 28, 2009; August 17, 2009; August 24 - 26, 2009; August 29, 2009; and September 3, 2009.

³ *Id.*

undisputed that Ms. W. withdrew from the class on September 3, 2009 in time to receive a 50% credit against her account. This left a balance owing for the Math 200 course totaling \$316. The University assed a \$300 late fee for a total amount owing of \$616.⁴

Ms. W. testified that during the 100% refund period she submitted a written add/drop form for her Math 200 class and handed it to a University employee working the registration kiosk. The University has no record of Ms. W. attempting to withdraw from Math 200 prior to September 3.

The University presented the testimony of its Registrar, John Allred, and its Director of Student Information, Michael Smith, to explain the registration process. Mr. Smith's group works the registration kiosk assisting students who have questions and are seeking to add or drop a class. If a student seeks to add/drop a class in writing (versus accessing their account online), the student takes the form to the kiosk where the student will be required to present picture identification. If the student does not have identification, the form is returned to the student and not processed. If the student has identification, the person working the kiosk will check to see if the class is available or if the drop is within the withdrawal period as appropriate. If the class is available or within the withdrawal period and no instructor signature is required, the form is accepted, the employee will complete the transaction, and initial and date the form before sending it to the Registrar's office for archiving.

Some of Ms. W.'s add/drop forms were stamped as received at the kiosk, signed, and dated. Others had no stamp but were dated and signed indicating acceptance of the form. Whether the person prefers to use the kiosk stamp or hand write the date is a matter of personal preference. As explained by Mr. Allred and Mr. Smith, it makes no difference to the University if the form is stamped as received and then initialed and dated or just initialed and dated as long as the form is dated and initialed when accepted.

In some instances the person working the kiosk does not have the authority to complete the action sought by the student. In those cases, the form is dated and signed as accepted by the kiosk and forwarded to the Registrar's office where the transaction is completed by the Registrar's office and the form is again dated. Such was the case with Ms. W.'s add/drop form dated September 1, 2009, stamped received by the kiosk September 2, 2009, and the

⁴ The parties agree this is the amount in dispute.

transaction completed in Ms. W.'s account September 3, 2009 by the registrar's office.⁵ Once processed, the add/drop form is organized by the registrar's office for archiving.

Mr. Allred testified that because the process involves humans there is always the possibility for error, which he would estimate occurs perhaps once a semester. Moreover, it was his experience that the error likely to occur would be when the form is archived. He testified that if they could not locate a form, then more likely than not, it was never received. Mr. Allred emphasized that for the sequence of events described by Ms. W.: she handed the add/drop to an employee, the form was not processed, and it was then lost is not a scenario he has ever encountered.

Ms. W. knew the University believed her to be in default on the Math 200 fees and tried to resolve the issue but found the University unresponsive.⁶ She expressed great frustration and dissatisfaction in her dealings with the University. She testified that the add/drop form was not the only paperwork lost by the University. She also claims she completed and filed with the University a petition seeking waiver/forgiveness of the \$316 tuition. Ms. W. recalled speaking with then University President Hamilton about her petition. As with her add/drop form, the University has no record of Ms. W. filing a petition.

Ms. W. described herself as not the easiest person for the University staff to deal with.⁷ She works full time, attends school and it seems she is always short of time.⁸ She was unaware her withdrawal from Math 200 had not been processed until she accessed her school calendar and the class was on her schedule. Once she became aware she immediately withdrew online. Ms. W. believes that the University is capable of making errors in the processing of paperwork and that her form was somehow lost or misplaced. She believes she should not have to pay for the University's error.

The University produced three Add/Drop forms for Ms. W. for the fall 2009 semester.⁹ Ms. W. believes there may be others. One add/drop form is hand written and provides a handwritten address at the top for Ms. W.¹⁰ When questioned regarding whether the handwriting and signature on the form was hers, Ms. W. explained that she could not recall the form or if she wrote the address or not because she completed "a lot of these forms."¹¹

⁵ Exh. 8 at 13 – 15, transaction numbers 186 - 191; Exhibit 12 at 2.

⁶ W. Testimony.

⁷ W. Testimony.

⁸ *Id.*

⁹ Exh. 12.

¹⁰ Exh. 12 at 1.

¹¹ W. Testimony.

She could not state with certainty whether the handwriting on the add/drop form was hers.¹² Ms. W. denied ever receiving the Notice of Default and questioned whether the address was correct. She thought the address was almost like the one she thought she would have given the University.¹³ Ms. W. did receive the Notice of PFD Claim which was sent certified mail to the same address as the Notice of Default.¹⁴ Included with the Notice of PFD Claim was a Notice of Defense. Ms. W. timely filed her Notice of Defense and Request for Hearing.

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.¹⁵

Ms. W. claimed the first defense.¹⁶ At hearing it became apparent that she was also claiming the third; that the amount owed was less than the amount claimed because she filed, at the kiosk, a written add/drop form for the Math 200 during the 100% tuition refund period but the form was not processed by the University.

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 Ms. W. claims the first and third, that the University did not send a notice of default in compliance with the law and that the amount claimed from her PFD is greater than the amount owed, if any. To prevail, Ms. W. must establish by a

¹² Exh. 6; Exh. 12 at 1.

¹³ W. Testimony.

¹⁴ *Id.*; Exh. 7.

¹⁵ AS 43.23.073(c).

¹⁶ Exhibit 1.

¹⁷ AS 14.40.251(a).

¹⁸ *Id.*; AS 43.23.073.

¹⁹ AS 43.23.073(c).

²⁰ *Id.*

preponderance of the evidence that she had timely withdrawn from the classes or that the service of the notice of default was flawed.²¹

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.”²² The University sent the Notice of Default to the address contained on the add/drop form. Ms. W. could not affirmatively state whether she completed the form. It is more likely than not that she did complete the form as it was submitted to accomplish the transactions she sought to complete. The address provided was on “E 9th Ave.” In an attempt to establish the Notice of Default was not sent to the address Ms. W. would have provided the University, Ms. W. attempted to distinguish the “E 9th Ave” on the Notice of Default from her address, “East 9th Ave.” It is a distinction without a difference. For addresses, the direction “east” is commonly abbreviated by the letter “E.” Moreover, Ms. W.’s argument is undercut by the Notice of Claim being delivered even though it was sent to an address on “E 9th Ave.” It is more likely than not that Ms. W. provided to the University the address to which the Notice of Default was sent. Ms. W. 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.

B. Ms. W. Owes the Amount Claimed

It is undisputed that Ms. W. signed up for Math 200 for the fall 2009 semester. The only issue is whether she timely withdrew. The primary evidence relied upon by Ms. W. is her testimony that she completed an add/drop form during the 100% tuition refund period and handed it to a University employee who was working the registration/student information kiosk. She attempts to bolster her testimony by noting that all of her other add/drops were completed during the 100% refund period.

The University challenges Ms. W.’s testimony arguing that the absence of any record establishes that Ms. W. did not tender a completed add/drop form for Math 200 during the 100% tuition period. Proceedings conducted under the Administrative Procedure Act, AS 44.62 *et.seq.*, need not be conducted according to the technical rules of evidence, but hearsay evidence may not support a finding of fact unless it would be admissible over objection in a civil action.²³ Hearsay can be an oral or written statement, other than one made by a witness while testifying,

²¹ AS 4462.460(e).

²² 14.40.251(b).

²³ AS 44.62.460(d).

offered to prove the truth of the matter asserted.²⁴ There are exceptions to the rule against hearsay that allow hearsay to be admissible. Two of these exceptions are relevant in this matter: the business record exception and the absence of a business record exception.²⁵

Under the business record exception, if a proper foundation is established by the proponent of the statement that it is the regular activity of a business to make or keep the report or record, then the report or record may be admissible as an exception to the rule against hearsay.²⁶ Evidence that a matter is not included in a report, record, or data compilation, to prove the nonoccurrence or nonexistence of the matter is also admissible if it is the kind of report or record that was regularly made and preserved and would have been admissible as business record.²⁷

The University attempted to establish Ms. W. did not timely withdraw because the event was not reported in Ms. W.'s Student Course Registration Audit Report, Exhibit 8. On the record developed, the University's reliance on Exhibit 8 is misplaced because it failed to lay a foundation that would establish the record to be admissible as a business record.²⁸

However, the testimony of Mr. Allred and Mr. Smith is sufficient to establish that the processing of add/drop forms is in the regular course of business of the University and that the form is a record upon which the University regularly relies to conduct its business activities.²⁹ Their testimony further established that if the add/drop form had been received it would have been processed and archived. Finally, they testified that the form was not archived. Therefore, the University has established that the absence of the add/drop form is evidence of the nonoccurrence of Ms. W. submitting a completed withdrawal form for Math 200 during the 100% tuition refund period.³⁰

Ms. W. was hurried. She had just started a new job and was busy adjusting her schedule. When viewed in its entirety, the record supports a finding that the more likely explanation is that in the flurry of transactions in August, Ms. W. simply overlooked the Math 200 class. As discussed above, Ms. W. testified that she could not identify an add/drop form that was completed in the same time frame. Her failure to recall with any clarity this

²⁴ Ak. R. Ev. 801(c).

²⁵ Ak. R. Ev. 803(6), (7).

²⁶ Ak. R. Ev. 803(6).

²⁷ Ak. R. Ev. 803(7).

²⁸ See Ak. R. Ev. 803(6).

²⁹ Ak. R. Ev. 803(6).

³⁰ Ak. R. Ev. 803(7).

particular form/transaction undermines her primary argument - that she remembers submitting a completed add/drop form to withdraw from Math 200.

The testimony of Mr. Allred and Mr. Smith, the absence of the add/drop record, and Ms. W.'s testimony that she completed a lot of add/drop forms and was unable to identify her signature or recall an add/drop form that was located by the University outweigh her testimony that she did timely withdraw from Math 200. Therefore, Ms. W. has failed establish by a preponderance of the evidence that the amount owed is less than the amount claimed and she is liable for the full amount of the claim.

IV. Conclusion

S. W. failed to meet her burden of proof that the amount owed is less than the amount claimed. The University of Alaska is entitled to claim a maximum of \$616 against one or more of Ms. W.'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.]