

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

In the Matter of)	
)	OAH No. 14-1646-PFE
G B. D)	Agency No. 5635221646
_____)	

ORDER GRANTING SUMMARY ADJUDICATION

This case is an appeal filed by G B. D regarding the garnishment of his Permanent Fund Dividend (PFD) to recover \$3,850.83 in principle, and accrued interest through August 21, 2014 of \$368.10, from Mr. D's PFDs to recover his debt to the Alaska Student Loan Program. Mr. D requested a hearing in this case, indicating that he was not timely sent the Notices of Default. A motion for summary adjudication was filed in this appeal and documentary evidence was attached, indicating that the Notices of Default were timely sent to Mr. D.

A prehearing conference was scheduled. At the prehearing conference, Mr. D agreed to respond to the motion for summary adjudication by October 19, 2014. Mr. D was in a hurry getting on an airplane, but he admitted that he had received the Notices of Default.

An order was issued directing Mr. D to provide any basis he has to challenge the evidence provided with the motion for summary adjudication, and directing him to respond to the motion by October 19, 2014. Mr. D did not respond to the motion.

Summary adjudication is appropriate in this case. The record presents no genuine issue of material fact. The staff of the Commission on Postsecondary Education (Staff) has made a showing that its determination was correct, based on the evidence it considered.

The Commission on Postsecondary Education has legal authority to take a student loan borrower's PFD when the loan is in default.¹ These garnishments can only be challenged based on a very limited list of issues.² While the Staff's failure to send a Notice of Default is on that list, Mr. D has not effectively shown that this potential issue is a matter of dispute in his appeal.

Mr. D first admitted at the prehearing conference that he received the notices of default. He then failed to demonstrate that a genuine issue of fact exists regarding these notices to be litigated. He did not produce admissible evidence reasonably tending to dispute the Staff's

¹ AS 14.43.145(a); AS 43.23.067.

² AS 14.43.145(c).

evidence that the Staff met all the statutory requirements when it sent these notices.

Mr. D has not diligently pursued his appeal. He did not provide a number to call prior to the pre-hearing conference or ask to have it rescheduled. When called at the time set for the prehearing conference at his phone number of record, he was getting on a plane. Mr. D declined to explain the reason for his appeal after he admitted that he had received the Notices of Default, when the timely issuance of these notices was the basis of his appeal. Mr. D did not respond to the motion as he both agreed to and was ordered to.

Mr. D's admissions and the undisputed facts of this case show that the Staff's determination in this matter is correct. Mr. D failed to demonstrate that a genuine issue of fact exists to be litigated. He did not show that he can produce admissible evidence reasonably tending to dispute the Staff's evidence.³

The Staff's motion for summary adjudication is granted. The Staff's action garnishing \$3,850.83 in principle, and accrued interest through August 21, 2014 of \$368.10, from Mr. D's PFDs to recover his debt to the Alaska Student Loan Program is upheld.

Dated: October 30, 2014.

By: Signed _____
Mark T. Handley
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commission on Postsecondary Education, adopts this Decision, under the authority of AS 44.64.060(e)(1), 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 12th day of December, 2014.

By: Signed _____
Title/Agency: Dianne Barrans, Exec. Dir.

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

³ See *French v. Jadon, Inc.*, 911 P.2d 20, 23 (Alaska 1996).