

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

In the Matter of	)	
	)	
E-D G. O	)	OAH No. 14-1695-PFE
_____	)	Agency No. 0516165842

**DECISION**

**I. INTRODUCTION**

The Alaska Commission on Postsecondary Education (ACPE) claimed Ms. O's 2014 Permanent Fund Dividend (PFD). Ms. O appealed by submitting a Notice of Defense. A case planning conference was scheduled for October 21, 2014, with the notice indicating that the parties could elect to proceed immediately with the hearing at the time of the conference, if they wished. Ms. O and the ACPE staff chose that option.

At the time of the combined planning conference and hearing, the ACPE staff had recently served a motion for summary adjudication. The time for response to the motion had not yet passed. The motion was treated as a prehearing brief with prefiled exhibits, and Ms. O was permitted to make her response via live testimony. The staff provided limited rebuttal and explanatory testimony through its Financial Aid Supervisor, Faith Guthert.

The law provides an extremely limited set of defenses that can be considered in a PFD execution hearing, and the borrower has the burden to establish one of those defenses. Ms. O was not able to do so, and her appeal must be denied.

**II. FACTS**

In 2008, Ms. O executed a promissory note for a state student loan,<sup>1</sup> which was subsequently disbursed to her in a principal amount totaling \$8,500.<sup>2</sup> She apparently defaulted on that loan. The amount of the accelerated unpaid balance (including interest) is currently more than \$9000,<sup>3</sup> and it therefore exceeds the amount of the 2014 PFD.

When she originally took out the loan, Ms. O gave two addresses, No Name Address A and No Name Address B, both of which were valid for her.<sup>4</sup> On February 4, 2009, she updated

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<sup>1</sup> Ex. A.  
<sup>2</sup> Guthert Affidavit, ¶ 3.  
<sup>3</sup> *Id.*, ¶ 6; Guthert hearing testimony.  
<sup>4</sup> Ex. A; O hearing testimony.

her address to be just one location, No Name Address A.<sup>5</sup> She submitted no further changes of address through October of 2013, and indeed her address remained No Name Address A through that time.<sup>6</sup>

A notice of default was mailed to the No Name Address A address on October 21, 2013.<sup>7</sup> Ms. O testified that she did not receive that notice.

Ms. O was aware that her loan was in arrears. In order to improve her credit so that she could get a different loan, Ms. O made a payment of just over \$1000 in March of 2014.<sup>8</sup> This was not enough to bring her loan current.<sup>9</sup>

### III. DISCUSSION

The commission is allowed 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> Ms. O's appeal form indicated that she was contesting the commission's action based on the first reason, that a notice of default had not been sent.

Alaska Statute 14.43.145 states

The commission shall notify the borrower of the default, and the consequences of default imposed under (a) of this section, by mailing a notice to the borrower's most recent address provided to the commission by the borrower or obtained by the commission.<sup>[13]</sup>

The commission's notice was sent to Ms. O's No Name Address A address, which was her most recent address provided to the commission and was in fact her address.

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<sup>5</sup> Guthert hearing testimony.

<sup>6</sup> O hearing testimony.

<sup>7</sup> Ex. B, C; Guthert hearing testimony. Ms. Guthert established that the letter was substantially in the form shown in Ex. C, and that by ordinary course of business, it would have been populated by computer with the address of record. No Name Address A was the sole address of record at that time.

<sup>8</sup> O and Guthert hearing testimony.

<sup>9</sup> Guthert hearing testimony.

<sup>10</sup> AS 14.43.145(a)(2); AS 43.23.067.

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

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

<sup>13</sup> AS 14.43.145(b).

Ms. O testified that she never received this notice. The applicable statute in this case does not require that Ms. O actually receive the notice of default. It is sufficient that the notice be mailed to the most recent address provided to the commission.

Ms. O's testimony that she did not receive the notice is some evidence that could suggest a mailing error.<sup>14</sup> However, that evidence is unpersuasive in light of the staff's strong evidence that the notice was generated by standard, electronic means to go to Ms. O's address. Moreover, Ms. O's recollection that she did not receive the notice is of uncertain reliability in itself, in light of Ms. O's clear knowledge, a few months later, that her loan was in arrears--leading to her large payment in March of 2014.

#### **IV. CONCLUSION**

The law allows the commission to claim Ms. O's PFD because she has defaulted on her student loan. The evidence in this case shows that the commission followed the proper notification procedure and is entitled to maintain a claim on Ms. O's PFD.

DATED this 22<sup>nd</sup> day of October, 2014.

*Signed* \_\_\_\_\_  
Christopher Kennedy  
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 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 1<sup>st</sup> day of December, 2014.

By: *Signed* \_\_\_\_\_  
Signature  
Diane Barrans  
Name  
Executive Director  
Title

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

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<sup>14</sup> Accordingly, summary adjudication would not be appropriate on this record; there is a dispute of material fact.