

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

In the Matter of: )  
 )  
 X H. S ) OAH No. 14-1697-PFE  
 ) Agency No. 1944971395  
\_\_\_\_\_)

**DECISION**

**I. Introduction**

The Alaska Commission on Postsecondary Education executed a claim on X S’s 2014 permanent fund dividend. Mr. S appealed. The Commission submitted evidence that supported its contention that it had mailed a notice of default to Mr. S at an address that it had reasonably obtained and relied upon. Because Mr. S was unable to refute the evidence that the Commission sent him a notice of default regarding his student loans, the Commission’s action is affirmed.

**II. Facts**

Mr. S received an Alaska student loan in 1997-98, and an additional loan in 2004-05. After his deferment ended in 2011 and the payback period on the loans began, Mr. S was unable to make his payments. The Commission’s computer recognizes when a loan is 180 days past due, and generates a notice of default. The Commission’s business records document that the Commission sent notices of default to Mr. S on May 4, 2012, for the first loan, and on October 8, 2012 for the second.<sup>1</sup>

The Commission executed a claim on Mr. S’s permanent fund dividends in 2012 and 2013, to which Mr. S did not object. When the Commission filed a claim for his 2014 dividend, however, Mr. S appealed. A telephonic hearing was held on October 31, 2014. Mr. S represented himself, and Financial Aid Supervisor Faith Guthert represented the Commission.

An important question in this hearing is whether the Commission sent the default notices to the proper address. The notices were sent to No Name Address A. The Division had obtained this address on March 11, 2010, when the U.S. Post Office sent the address to the Commission as a forwarding address for Mr. S. The Commission substituted No Name Address A for a post office box address that it was previously using.<sup>2</sup>

Mr. S acknowledged that he lived at No Name Address A for a short time after he and his wife split up. He also acknowledged that the post office box address was valid only for a short

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<sup>1</sup> Guthert testimony.

<sup>2</sup> *Id.* No Name Address A stayed on file until 2013 when the Commission received notice of a different address through a bankruptcy filing.

time when he was making use of a friend's post-office box. He testified, however, that at all times, he considered his ex-wife's residence address No Name Address B to be his permanent address of record. Mr. S's ex-wife, J T, testified that she did submit paperwork to the Commission on Mr. S's behalf using that address. They received mail from the Commission at No Name Address B. Ms. T would not have changed Mr. S's address with the Commission because she continued to receive mail for him after he left the household. She did not, however, recall receiving any mail from the Commission after Mr. S left the home.

### **III. Discussion**

The Commission has legal authority to execute on a student loan borrower's PFD when the loan is in default.<sup>3</sup> Once the Commission has provided proper notification of its claim against an individual's PFD, that individual has the burden of refuting the Commission's claim and may only defeat the claim by showing: (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 borrower is less than the amount claimed from the PFD.<sup>4</sup>

At the hearing, Mr. S argued that the Commission had not sent the default notices to his correct address. He maintains that his address of record was No Name Address B. Both he and his ex-wife testified that they gave the Commission that address and they received mail from the Commission at that address. In his view, the Commission never had any reason to send mail to another address.

The Commission does not have a record of having No Name Address B before 2013. Yet, given the testimony of Mr. S and Ms. T, the evidence supports a finding that the Commission did have No Name Address B for a time before 2010, which is when Mr. S left the home. He received little or no mail at No Name Address A, which was a remote cabin with no running water that he lived in for only a short time. Mr. S argues that he never would have told the Commission to stop using No Name Address B, so therefore, in his view, the Commission's use of another address—especially No Name Address A—was wrongful. He concludes that the default notices that were sent to No Name Address A were not properly noticed as required by law.

The problem for Mr. S, however, is that the law does not support his argument. Under the law, the Commission must notify the borrower of the default "by mailing a notice to the

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<sup>7</sup> AS 14.43.145(a); AS 43.23.067.

<sup>4</sup> AS 43.23.067(c).

borrower's *most recent* address provided to the commission by the borrower or *obtained by* the commission."<sup>5</sup> Given that the statute does not specify any measures that the Commission should take to verify an address that it obtains, the only requirement is that the Commission act reasonably in obtaining an address—a requirement frequently inferred in law. Therefore, Mr. S can prevail only if he proves that the Commission acted unreasonably.

Here, in 2010, the Commission obtained Mr. S's most recent address from the U.S. Post Office through a change of address form. Mr. S admitted that it was reasonable for the Commission to have been using his borrowed post-office box address after he left home. Once that address was no longer viable, the Commission acted reasonably by relying on the U.S. Post Office as a reasonable source for a change-of-address notification. If that address was not accurate, Mr. S must share in the responsibility for ensuring that the Commission has a more accurate address.

In sum, the legislature permits the Commission to claim the PFDs of people who are in default on their state loans. The Commission must give reasonable notice and act reasonably in addressing that notice. The Commission has done that. This decision does not deny that Mr. S has financial hardships, but the law requires that the Commission's actions be upheld in this case.

#### **IV. Conclusion**

The Alaska Commission of Postsecondary Education's claim on Mr. S's 2014 permanent fund dividend is affirmed.

DATED November 21, 2014

*Signed*

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Stephen C. (Neil) Slotnick  
Administrative Law Judge

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<sup>5</sup> AS 14.43.145(b).

## Adoption

I, on behalf of the Alaska Commission on Postsecondary Education and in accordance with AS 44.64.060, adopt 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 23rd 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.]