

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

In the Matter of: )  
 )  
X.X. ) OAH No. 22-0801-PFE  
 ) Agency No. 5514207747  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

X.X. previously applied for and received an education loan from the Alaska Commission on Postsecondary Education (ACPE). After X.X. defaulted on the loan, ACPE notified him of its execution against his Permanent Fund Dividend (PFD) to satisfy his past due obligation. X.X. appealed, asserting that ACPE failed to send a notice of default as required and based on personal or financial hardship.

The evidence in this case demonstrates that ACPE properly established the existence of the obligation owing and provided X.X. with the appropriate notice of default. As a result, ACPE’s garnishment of X.X.’s PFD is affirmed.

**II. Facts**

A signed education loan application identifying X.X. as “Borrower” was submitted to ACPE on November 11, 2005.<sup>1</sup> The loan document states that if the borrower defaults on the loan, ACPE may declare the entire unpaid amount due and may garnish the borrower’s PFD.<sup>2</sup>

According to ACPE’s records, it sent X.X. a notice of default for the loan on October 22, 2014.<sup>3</sup> The notice stated that ACPE may pursue garnishing X.X.’s PFD and informed him of his right to appeal the notice of default.<sup>4</sup> ACPE’s records further document its system journal entries, showing delinquency letters sent to X.X..<sup>5</sup> As the documentation also reflects, X.X.’s address at the time of the loan was A Street, Alaska.<sup>6</sup> However, his address was later changed to B Street, Alaska. It then appears that X.X. subsequently became homeless, and his address was

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<sup>1</sup> Affidavit Regarding Account History and Status (ACPE Affidavit), Appendix B at 1-2.  
<sup>2</sup> *Id.* at 2.  
<sup>3</sup> ACPE Affidavit, Appendix E.  
<sup>4</sup> *Id.*  
<sup>5</sup> ACPE Affidavit, Appendix D.  
<sup>6</sup> ACPE Affidavit, Appendix B at 1.

updated yet again.<sup>7</sup> Subsequently, on August 26, 2022, X.X. was sent a notice by ACPE of its claim to his 2021 PFD. The address used for this notice was C Street, Alaska.<sup>8</sup>

X.X. received and appealed the 2022 notice, claiming that ACPE did not send a notice of default and further, that garnishment should not occur because of personal or financial hardship.<sup>9</sup> Although he was notified that a telephonic hearing would occur at 1:00 p.m. on October 27, 2022, X.X. failed to appear and could not be reached for the hearing after several calls were made to his number of record.

### III. Discussion

ACPE may take an education loan borrower's PFD when the loan is in default.<sup>10</sup> Once ACPE provides proper notice of default and a claim against the borrower's PFD, the borrower has the burden of refuting the claim.<sup>11</sup> The borrower may do this by showing one of only three things: (1) ACPE 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> On his hearing request, X.X. claimed ACPE did not send a notice of default and that garnishment should not occur based on based on personal or financial hardship.<sup>13</sup>

However, according to ACPE's records, it sent X.X. a notice of default for the loan on October 22, 2014.<sup>14</sup> This notice indicated that ACPE may pursue garnishing X.X.'s PFD and notified him of his right to appeal the notice of default.<sup>15</sup> ACPE later notified X.X. that it had filed a claim on his 2022 PFD.<sup>16</sup> Therefore, based on the uncontroverted evidence, X.X. has not met his burden of showing that ACPE failed to provide notice.

Further, while X.X.'s referenced personal and financial hardships are unfortunate, they do not provide a legal basis to prevent a claim against his PFD for amounts owing from the

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<sup>7</sup> ACPE Affidavit at 3; *id.* at Appendix F; *id.* at Appendix A.

<sup>8</sup> Notice to X.X. (August 26, 2022).

<sup>9</sup> Request for Hearing (August 30, 2022); ACPE Affidavit at Appendix A.

<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> Request for Hearing (August 30, 2022); ACPE Affidavit at Appendix A.

<sup>14</sup> ACPE Affidavit at Appendix E.

<sup>15</sup> *Id.*

<sup>16</sup> Notice to X.X. (August 26, 2022).

defaulted education loan.<sup>17</sup> Under these circumstances, X.X.'s assertion of personal and financial hardship is unavailing.

#### IV. Conclusion

Because ACPE provided appropriate notice of default, its garnishment of X.X.'s PFD is affirmed.

DATED this 9<sup>th</sup> day of November 2022.

*Signed* \_\_\_\_\_  
Z. Kent Sullivan  
Administrative Law Judge

### Adoption

The ALASKA COMMISSION ON POSTSECONDARY EDUCATION adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 8<sup>th</sup> day of December, 2022.

By: *Signed* \_\_\_\_\_  
Signature  
Sana Efird \_\_\_\_\_  
Name  
Executive Director \_\_\_\_\_  
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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<sup>17</sup> AS 43.23.067(c).