

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

In the Matter of: )  
 )  
F.E. ) OAH No. 22-0769-PFE  
 ) Agency No. 5956201440  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

The Alaska Commission on Postsecondary Education (“ACPE”) executed a claim on F.E.’s 2022 Permanent Fund Dividend (“PFD”) after she defaulted on her student loan payments. F.E. appealed, claiming ACPE did not send her a notice of default. The evidence demonstrates that ACPE did send F.E. a notice of default, albeit back in 2005. Because of the age of this loan and the limited collection actions taken by ACPE in the intervening years, there is a legal question as to whether ACPE can maintain its collection action against F.E. on this debt. As discussed below, the evidence and the applicable law demonstrate that ACPE is entitled to execute on F.E.’s PFD.

**II. Facts**

F.E. took out a student loan payable to ACPE in the spring of 2000. The loan documents state that if the borrower defaults on the loan, ACPE may declare the entire unpaid amount due and may garnish the borrower’s PFD.<sup>1</sup> F.E. fell behind in her payments, and as of January 18, 2005, she was more than 180 days in arrears. On that date, ACPE mailed her a notice of default at her current address, notifying her that her loan was in default and that her PFD was subject to being seized to pay off the loan. That notice of default notified her that she had the right to appeal it.<sup>2</sup> There is no evidence showing that F.E. appealed that notice. She did make some limited payments after receipt of the notice. Her last voluntary payment was made in 2009 in the amount of \$100, but it did not bring her payments current. ACPE seized her 2017 PFD.<sup>3</sup>

In August 2022, the balance due and owing on the loans was \$5,567.17, including principal and accrued interest. ACPE sent F.E. a letter on August 26, 2022, advising her of the balance due and that it intended to seize her PFD and apply it against her debt.<sup>4</sup> F.E. requested a hearing on September 28, 2022. In her hearing request, she checked the box indicating that her

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<sup>1</sup> Affidavit Regarding Account History and Status (“ACPE Aff.”), Appendix B.

<sup>2</sup> ACPE Aff., Appendix D.

<sup>3</sup> Ms. Carlton’s testimony.

<sup>4</sup> ACPE Notice dated August 26, 2022.

ground for an appeal was that “ACPE did not send a Notice of Default, or notice that my account was more than 180 days past due, as required by AS 14.43.145(b).”<sup>5</sup>

F.E. testified that she never received any correspondence about her loan from ACPE since 2005. Nor did ACPE contact her to try and set up a payment plan on her loan. Instead, ACPE executed upon F.E.’s 2017 and 2022 PFDs and applied them to her loan. After applying the funds received from her PFDs, the balance due and owing stood at \$2,321.23 as of the date of hearing.<sup>6</sup>

### **III. Discussion**

ACPE may take a student loan borrower’s PFD when the loan is in default.<sup>7</sup> Once ACPE provides proper notice of default, in a subsequent claim against the borrower’s PFD the borrower has the burden of refuting the claim.<sup>8</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>9</sup> On her hearing request, F.E. claimed ACPE did not send a notice of default. She did not assert that the notice of default was rescinded or that she owed less than claimed by ACPE.

The evidence includes a copy of the 2005 notice of default addressed to F.E. at an address provided by her around that time. The applicable statute requires ACPE to mail notice of default to the borrower’s most recent address. The weight of the evidence, F.E.’s testimony notwithstanding, indicates ACPE did so. Based on the evidence in the record, F.E. did not meet her burden to show that ACPE failed to mail the statutorily required notice of default. There is also no evidence in the record to show that F.E. appealed that notice.

Because F.E. did not meet her burden to demonstrate that ACPE did not send her the requisite notice of default, that would normally result in a finding in ACPE’s favor. However, given the age of this loan and the limited collection efforts by ACPE, it is necessary to address the issue of whether ACPE’s collection efforts are barred by the passage of time.

This issue is answered by the Alaska Supreme Court in the analogous case of *Koss v. Koss*.<sup>10</sup> In *Koss*, the Court held that the statute of limitations applied to the initiation of actions to

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<sup>5</sup> See Hearing Request dated September 28, 2022.

<sup>6</sup> Ms. Carlton’s testimony.

<sup>7</sup> AS 14.43.145(a)(2); AS 43.23.160.

<sup>8</sup> AS 43.23.160(c).

<sup>9</sup> AS 43.23.160(c).

<sup>10</sup> *Koss v. Koss*, 981 P.2d 106 (Alaska 1999). See also *State ex rel. Inman v. Dean*, 902 P.2d 1321 (Alaska 1995) (holding that statute of limitations does not apply to collection proceedings, which are limited only by AS

establish a debt, not the administrative actions to enforce or collect upon the debt. In this case, ACPE established the debt when it sent F.E. the required notice of default in 2005. F.E. could have contested the establishment of the debt if she had appealed the notice of default.<sup>11</sup> Because she did not appeal, ACPE established the debt and had the authority to recovery the debt by collection.<sup>12</sup> Because this is an administrative collection of an established debt, and because the time limitations set forth in Alaska statutes for execution on a civil judgment explicitly do not apply to ACPE’s administrative collection of a recipient’s PFD<sup>13</sup>, ACPE is not precluded in this instance by the passage of time from taking F.E.’s PFD to satisfy her past-due student loan debt.

#### IV. Conclusion

Because ACPE provided a proper notice of default, its execution of F.E.’s PFD is affirmed.

Dated: November 8, 2022

Signed

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Lawrence A. Pederson

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 12<sup>th</sup> day of December, 2022.

By: Signed

\_\_\_\_\_  
Signature

Sana Efirid

\_\_\_\_\_  
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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09.35.020--a provision that does not apply to an administratively established debt). *Also see State ex rel. Gerke v. Gerke*, 942 P.2d 423, 427 (Alaska, 1997).

<sup>11</sup> AS 14.43.145(c).

<sup>12</sup> AS 14.43.145(a).

<sup>13</sup> AS 43.23.160(a).