

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

Chapter 7
LESLIE A. ROFF,

Bankruptcy

92-10985-CLB

Debtor.

LESLIE A. ROFF,

Plaintiff,

v.

Adversary Proceeding
No. 19-01081-CLB

UNITED STATES DEPARTMENT OF
EDUCATION,

Defendant.

SETTLEMENT AGREEMENT

This agreement is made by and between the parties to this action, Leslie A. Roff, ("Plaintiff"), by and through her attorney, Ruth R. Wiseman, and the United States Department of Education ("Department"), by and through its attorney, James P. Kennedy, Jr., United States Attorney for the Western District of New York, and Mary Clare Kane, Assistant U.S. Attorney, of counsel (the "Parties"). The agreement is effective the latest date beneath the signatures below.

WHEREAS, Plaintiff filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code on March 20, 1992.

WHEREAS, the Department reviewed Plaintiff's account on April 23, 1992 and determined that four of the six outstanding debts it held at that time would be dischargeable under the bankruptcy provisions in 11 U.S.C. § 523(a)(8) that were applicable at the time.

In short, loans for which, excluding suspensions of repayment (e.g., deferment periods), seven years or more had elapsed between the filing date and the first payment due date of the loan were discharged. The Department determined that the two loans that are the subject of this Adversary Proceeding did not meet the seven-year criteria for discharge.

WHEREAS, Plaintiff was granted a general discharge for four out of six loans and a Final Decree was entered on June 24, 1992.

WHEREAS, Plaintiff re-opened her bankruptcy by motion on December 6, 2019 for the sole purpose of collecting damages related to alleged financial and emotional distress she suffered as a result of the Department's collection, through the Treasury Offset Program ("TOP") and Administrative Wage Garnishment ("AWG"), on two student loans that Plaintiff alleged were discharged in the 1992 Bankruptcy. Plaintiff also sought a determination regarding the dischargeability of the remaining two loans pursuant to 11 U.S.C. § 523.

WHEREAS, Plaintiff is indebted to the Department for a Family Federal Education Loan Program ("FFELP") loan disbursed in the amount of \$5,000.00 on August 22, 1984 at a 9% interest per annum for studies undertaken at Golden Gate University School of Law. Plaintiff defaulted on the FFELP loan obligation on November 19, 1986. The loan was assigned to the Department on or about November 15, 1991 and was assigned Debt Identification Number (DIN) (b)(6) at that time.

WHEREAS, Plaintiff is indebted to Department for an Auxiliary Loan Assistance for Students ("ALAS") loan disbursed in the amount of \$3,000.00 on November 6, 1984 at a variable rate of interest to be established annually by the Department of Education. Plaintiff defaulted on the ALAS loan obligation on December 5, 1985. The loan was

assigned to the Department on or about on October 30, 1991 and was assigned Debt Identification Number (DIN) (b)(6)

WHEREAS, subsequent to the 1992 filing of Plaintiff's bankruptcy, the Department received payments from all sources, including through TOP and AWG. Payments received from all sources, including TOP and AWG, totaled \$20,657.02 and were applied in a pro rata fashion to each of the Plaintiff's two debts.

WHEREAS, the amount due and owing on the FFELP loan obligation referred to herein through June 3, 2021 is \$7,899.93.

WHEREAS, the amount due and owing on the ALAS loan obligation referred to herein through June 3, 2021 is \$3,331.17.

IT IS NOW HEREBY AGREED AND STIPULATED THAT Plaintiff and the Department now desire to discontinue litigation, resolve their dispute and terminate the instant Adversary Proceeding. In consideration of the mutual covenants and conditions herein contained, the Parties agree as follows:

1. Plaintiff agrees to dismiss with prejudice the current Adversary Proceeding, in which she was seeking a ruling that repayment of the student loan debts (DINs (b)(6) and (b)(6) referenced above were dischargeable pursuant to 11 U.S.C. § 523(a)(8)(B). Plaintiff further agrees not to seek recovery from the Department of any monies paid to the Department on these student loan debts from any source, other than as provided in ¶2 below. Finally, Plaintiff agrees not to seek recovery of any damages or attorney's fees from the Department for collection actions taken in reference to the student loan debts that are the subject of this agreement.

2. The Department agrees to perform the following actions:

- i. The Department will write off the amount due on the ALAS student loan debt (DIN (b)(6)) as of June 3, 2021, that amount due is \$3,331.17. For purposes of this agreement, the Parties agree that Plaintiff's debts to Department on the ALAS loan only is hereby deemed dischargeable under the provisions of 11 U.S.C. § 523(a)(8).
- ii. The Department will reallocate the payments made on the ALAS Loan DIN (b)(6) to the balance owed on the FFELP loan DIN (b)(6) as of the date the payments were originally credited and will then refund any overpayment to Plaintiff through her attorney.
- iii. Subsequent to the actions in subparagraphs 2.i & 2.ii, the Department will cease any further collection activity with regard to the FFELP loan DIN (b)(6) and the debt will be considered paid in full.

3. This Settlement Agreement pertains to and applies to only the student loan debts referenced within this agreement (DINs (b)(6) and (b)(6)).

4. This Settlement Agreement constitutes a settlement and full accord and satisfaction of all matters related to the student loan debts that are the subject of this agreement and any matters related to those student loans which could have been the subject of litigation within the Adversary Proceeding initiated by Plaintiff. This Agreement

constitutes full and final release by the Department of Plaintiff from any and all civil remedies related to those student loan debts.

5. This Settlement Agreement does not constitute an admission of liabilities owed, wrongdoing or noncompliance by either Plaintiff or the Department.

6. No modifications or additions to the terms of this Settlement Agreement shall be effective unless made in writing and signed by the authorized representatives of the parties.

7. This Settlement Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Settlement Agreement is the United States District Court for the Western District of New York. For purposes of construing this Settlement Agreement, it shall be deemed to have been drafted by all Parties to this Settlement Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

8. The Court shall retain jurisdiction to enforce the terms and conditions contained herein and to determine any disputes that may arise.

9. This document may be executed in counterparts and may be delivered by facsimile or by electronic scan and e-mail. Any copy so executed and delivered (including delivery electronically by facsimile or e-mail), when taken with another executed copy, shall be considered and deemed original hereof.

DATED: Buffalo, New York July 19, 2021
~~June~~ 2021

Dated:

(b)(6)

July 19, 2021
2021

(b)(6)

Assistant United State Attorney
U.S. Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, N.Y. 14202

Dated:

(b)(6)

June July 8

2021

Ruth R. Wiseman, Esq.
Andreozzi Bluestein LLP
9145 Main Street
Clarence, New York 14031

Dated:

(b)(6)

June 30

2021

Ms. Leslie A. Roff
c/o Ruth R. Wiseman, Esq.
Andreozzi Bluestein LLP
9145 Main Street
Clarence, New York 14031

Dated: July 14, 2021

(b)(6)

Mr. Chad Keller
Litigation Branch
San Francisco Service Center
United States Department of Education
50 United Nations Plaza
San Francisco, CA 94102-4987

DATED: Buffalo, New York June , 2021.

Dated: June , 2021

Mary Clare Kane

Assistant United State Attorney
U.S. Attorney's Office
Western District of New York
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Dated: June July 8, 2021

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Dated: June 30, 2021

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Mr. Chad Keller
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DATED: Buffalo, New York June , 2021.

Dated: June , 2021

Mary Clare Kane

Assistant United State Attorney
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Dated: June July 8, 2021

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Dated: June 30, 2021

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Dated: June ___, 2021

Mr. Chad Keller
Litigation Branch
San Francisco Service Center
United States Department of Education
50 United Nations Plaza
San Francisco, CA 94102-4987

Entered: March 5th, 2021

Signed: March 4th, 2021

SO ORDERED

Nancy V. Alquist
 NANCY V. ALQUIST
 U. S. BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF MARYLAND**

In re:	*	
Jeffrey Bowers & Tammy Bowers,	*	Case No. 19-20680
Debtors	*	Chapter 7
* * * * * *	*	* * * * * *
Jeffrey Bowers	*	
and	*	
Tammy Bowers,	*	
Plaintiffs	*	Adversary No. 20-00137
v.	*	
US Department of Education,	*	
Defendant.	*	
* * * * * *	*	* * * * * *

CONSENT JUDGMENT DISCHARGING STUDENT LOAN OBLIGATIONS

UPON consideration of the Consent by the Defendant, the U.S. Department of Education (“DOE”), and Plaintiffs Jeffrey Bowers and Tammy Bowers (“Plaintiffs” or “Debtors”) to the relief sought herein, and it appearing that DOE is the holder of all right, title, and interest in the Federal Direct Stafford/Ford Loans represented by Parent Plus Nos. EXXXX7508 and

EXXX6701, of which Debtors are the obligors (the “Student Loans”), and for good cause shown, it is, by the United States Bankruptcy Court for the District of Maryland, hereby

ORDERED, ADJUDGED AND DECREED that the Student Loans constitute, and they are hereby, an undue hardship on the Debtors and the Debtors’ dependents within the meaning of Section 523(a)(8) of the United States Bankruptcy Code, 11 U.S.C. § 101 et. seq, and are therefore not subject to the exclusion from discharge interposed by said Section 523(a)(8); and it is further

ORDERED, ADJUDGED AND DECREED that the Student Loans be, and they are hereby, DISCHARGED in the above-captioned Chapter 7 bankruptcy case; and it is further

ORDERED, ADJUDGED AND DECREED that any and all individual taxation consequences as a result of this Consent Judgment are the sole and exclusive responsibility of Debtors; and it is further

ORDERED, ADJUDGED AND DECREED that DOE does not warrant or make any representation with respect to any tax consequences of this Consent Judgment; and it is further

ORDERED, ADJUDGED AND DECREED that nothing contained herein shall constitute a waiver by Debtors of any right to challenge any tax consequences of this Consent Judgment; and it is further

ORDERED, ADJUDGED AND DECREED that the parties will bear their own attorneys’ fees and costs.

AGREED:

/s/Ronald J. Drescher
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Counsel for Defendant

Cc:

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