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2 District of Nevada
Nevada Bar No. 2137
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FEB 7 5 04 PM '05

U.S. DISTRICT COURT
DISTRICT OF NEVADA
FILED
AFTER HOURS
FEB - 7 2005
CLERK, U. S. DISTRICT COURT
DISTRICT OF NEVADA
BY MS DEPUTY

6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 UNITED STATES OF AMERICA,)
9)
Plaintiff,)
10 vs.)
11)
12)
13)
14 CAROLYN A. SHARP a/k/a)
CAROLYN HARLEY)
15)
Defendant.)
16

CV-S-04-1401-RLH(LRL)

PLAINTIFFS RESPONSE TO DEFENDANTS
EMERGENCY MOTION FOR ORDER TO SET
ASIDE ORDER FOR SUPPLEMENTARY
PROCEEDINGS OF JUDGMENT DEBTOR
EXAMINATION AND PLAINTIFFS MOTION TO
VACATE JUDGMENT DEBTOR EXAMINATION

17 COMES NOW the United States of America, by and through Daniel G. Bogden, United
18 States Attorney, and Carlos A. Gonzalez, Assistant United States Attorney, and files its response to
19 Defendants Emergency Motion for Order to Set Aside Order for Supplementary Proceedings of
20 Judgment Debtor Examination pursuant to this Honorable Court Order of January 25, 2005 as
21 follows:

22 The United States hereby request an Order vacating the Supplementary Proceedings of
23 Judgment Debtor Examination of Defendant.

24 This request is made after independent research as well as consultations with personnel from
25 the Department of Health and Human Services in Washington, D.C., United States Attorneys Office
26 in the Northern District of Ohio, and Financial Litigation Staff for the Executive Office for the

9, 10



1 United States Attorneys have confirmed that Defendant is correct in her assertion that the original
2 Ohio state judgment of May 18, 1993 has reached a dormant status pursuant to section 2329.07 of
3 the Ohio Revised Code.

4 The above mentioned development will not negate the governments claim against the
5 Defendant but will certainly delay its resolution until further proceedings are undertaken in the Ohio
6 State Court which issued the original default judgment against the Defendant. Until such time, there
7 is no need for any United States District Court to remain involved.

8 Section 2325.15 of the Ohio Revised Code provides for a remedy to revive the original Ohio
9 judgment in order to resume collections efforts against the Defendant.

10 Arrangements are being made for the United States Attorneys Office in Nevada to return the
11 case to the Department of Health and Human Services in Washington D.C. for its re-routing to the
12 United States Attorneys Office in Columbus, Ohio, for the purpose of reviving the original
13 judgment. At that time, upon conclusion of such task, the United States Attorneys Office in Nevada
14 will once again pursue collection efforts against Defendant in assisting the United States Attorneys
15 Office in Ohio.

16 Defendants allegation that the debt has been discharged in bankruptcy will not help her then
17 as it does not help her now.

18 Defendant defaulted in her student loan on July 22, 1993, and filed a Chapter 7 bankruptcy
19 petition on March 29, 1994. The petition apparently was served on the Student Loan Marketing
20 Association at some point afterwards. The Bankruptcy Court awarded Defendant a discharge of all
21 dischargeable debts on August 15, 1994.

22 Section 292(f)(g) of Title 42 of the United States code states:

23 Conditions for discharge of debt in bankruptcy

24 Notwithstanding any other provision of Federal or State law, a debt that is a loan
25 insured under the authority of this subpart may be released by a discharge in
bankruptcy under any chapter of Title 11, only if such discharge is granted--

26 (1) after the expiration of the seven-year period beginning on the first

date when repayment of such loan is required, exclusive of any period after such date in which the obligation to pay installments on the loan is suspended;

- 1 (2) upon a finding by Bankruptcy Court that the nondischarge of such debt would be unconscionable; and
- 2 (3) upon the condition that the Secretary shall not have waived the Secretary's right to apply subsection (f) of this section to the borrower
- 3 and the discharged debt.

4 The burden is on the debtor to seek discharge. To obtain the discharge of a HEAL loan, the
5 debtor must file an adversarial complaint seeking the dischargeability of the HEAL loan and to
6 properly serve the United States in order to litigate the issue. The position that the burden is on the
7 debtor is based on 42 U.S.C. §292(g), which states that the loan is not discharged unless, after 7 years
8 from the beginning of the repayment period, the debtor obtains a finding by the Bankruptcy Court
9 that the nondischarge of the debt would be unconscionable.

10 It is apparent that in 1994 the defendant was not in default for the required seven year period
11 before she could request bankruptcy relief. It is also undisputed that she filed a Chapter 7
12 bankruptcy petition as opposed to a Chapter 11 Adversary Complaint and that she did not and could
13 not have obtained an unconscionability determination by the court. Likewise it is clear that the 1994
14 petition was served on the wrong party as the holder of the loan at that time was not the Student
15 Loan Marketing Association but the United States by virtue of the June 10, 1993, assignment of
16 judgment (exhibits #1 and #2).

17 Apparently realizing that her HEAL loan had not been discharged in 1994, Defendant tried
18 to reorganize her debts under a Chapter 11 bankruptcy petition in 2002. The United States objected
19 to the loan inclusion in the bankruptcy proceedings and the Defendant agreed to a payment plan with
20 HHS (exhibit #3).

21 The conditions applied to Defendant in this case are consistently applied to debtors in similar
22 situation by federal courts across the land:

23 **U.S. v. Ronald Georgeson**, No. CV F-88-641 EDP (E.D. Ca. July 7,
24 1989)(men. decision and order granting judgment to U.S.). The U.S. filed a
25 complaint seeking judgment on defaulted HEAL loans. The Debtor asserted that
26 the bankruptcy had discharged the loans under Chapter 7. **The District Court found that the general discharge has not discharged the HEAL loans, and the debtor had never filed and adversary complaint.** Further 5 years had not passed.

United States v. Degerness, Civ. No. 91-A-806, 1992 WL 295952(D.Co. Sept. 14, 1992). The court granted summary judgment to the government based on


1 a *prima facie* case on a defaulted HEAL loan. The government proved the existence
2 of the note, the debtor's default, and the amount due. The debtor defended alleging
3 that the loan had been discharged in a Chapter 7 bankruptcy. **The court found that
4 the debtor has not received a ruling of unconscionability under 42 U.S.C.
5 §292F(g)(2), so the Loan had not been discharged.**

6 **United States v. Randall Wood**, 925 B.R. 1580 (7th Cir.1991). The debtor
7 appealed from the District Court ruling granting judgment of his defaulted HEAL
8 loans and finding that they had been discharged in his bankruptcy case. The
9 bankruptcy court had issued a general discharge and had made no ruling on
10 unconscionability. The debtor argued that the burden of initiating the
11 dischargeability proceeding under the HEAL statute was on the government, and by
12 not objecting to the discharge in bankruptcy the government waived its right to have
13 the bankruptcy court rule on unconscionability. Based on the similarity of 11 U.S.C.
14 §523(a)(8), which courts have found to be self-executing, **the court found that the
15 HEAL statutory bar to discharge is self-executing and the burden is on the
16 debtor to request a determination of dischargeability of a HEAL loan.**

17 It is therefore requested that the Defendant's Judgment Debtor Examination in furtherance
18 of the United States claim be vacated.

19 DATED this 7th day of February, 2005.

20 DANIEL G. BOGDEN
21 United States Attorney

22 
23 CARLOS A. GONZALEZ
24 Assistant U. S. Attorney
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Case No. 94-51729

In re Carolyn Sharp, M.D.

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS (Continuation Sheet)

Table with 7 columns: CREDITOR'S NAME AND MAILING ADDRESS, INCLUDING ZIP CODE; CO-DEBTOR; DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN; CONTINGENT; UNPAID; DEBITED; AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL; UNSECURED PORTION IF ANY. Rows include ITT Consumer Financial Corporation, Shalfar Services, Inc., Student Loan Marketing Association, and The Huntington National Bank.

Subtotal (Total of this page) \$628,879.20

Total (Use only on last page) \$674,613.25

(Report total also on Summary of Schedules)

Sheet no. 3 of 3 continuation sheets attached to the Schedule of Creditors Holding Secured Claims

(Photocopy this form before use.)



30467F13

ASSIGNMENT OF JUDGMENT

I, CAROLYN L. HURD, representing Sallie Mae Loan Student Loan Marketing Association/LSC/VA of 365 Herndon Parkway, city of Herndon, county of Fairfax, State of Virginia, in consideration of the sum of \$67,138.35, receipt of which is acknowledged, paid to me by the United States of America, the assignee, hereby assign to assignee the judgment, recovered by Sallie Mae Loan Servicing Center/Virginia on 05-18-93, docketed in COMMON PLEAS COURT, MONTGOMERY COUNTY, OHIO, Case No. 93-792, against CAROLYN A. SHARP for \$67,138.35 (amount of judgment, indicating treatment of interest, court costs, and attorney's fees, if appropriate).

Assignor authorizes the United States of America to ask, demand, and receive, and to sue out executions and take all lawful ways for recovery of the money due or to become due on this judgment.

Assignor has not done and will not do anything to hinder or prevent the United States of America from enforcing the judgment.

I have executed this assignment at Loan Servicing Center the 10TH day of JUNE, 1993.

Carolyn L. Hurd

(signature)

PLAINTIFF'S EXHIBIT
B

June 18, 1993
LJAG:ms

EXHIBIT
2

COPY

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

00 MAY -1 PM 2:11

MICHAEL D. WEBB, CLERK
U.S. BANKRUPTCY COURT
COLUMBUS, OHIO

In Re: : Case No. 00-50022
CAROLYN ANN SHARP, : Chapter 13
Debtor. : Judge Calhoun

RECEIVED
MAY - 3 2000
U.S. ATTORNEY
COLUMBUS, OH

**AGREED ORDER RESOLVING THE UNITED STATES OF AMERICA'S
OBJECTION TO CONFIRMATION OF THE DEBTOR'S CHAPTER 13 PLAN**

The United States of America on behalf of the Department of Health and Human Services (HHS) and Carolyn Ann Sharp, debtor, agree to resolve HHS' Objection to the Chapter 13 plan of Debtor, as follows:

- (1) Debtor, Carolyn Ann Sharp will pay to HHS the sum of \$300.00 per month during the life of the plan;
- (2) The debt to HHS will survive the completion of the Bankruptcy and not be discharged herein; and will continue to be due and payable to HHS.

IT IS SO ORDERED

MAY 1 2000
Date

[Signature]
United States Bankruptcy Judge

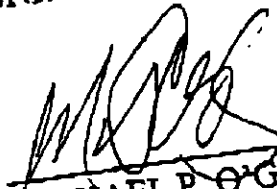
Approved:

[Signature]
Pamela N. Miggied
Attorney for Debtor
50 W. Broad Street, #2600
Columbus, OH 43215-3327
(614)464-2236

ENTERED
MAY 01 2000
[Signature]

EXHIBIT
3

SHARON J. ZEALEY
UNITED STATES ATTORNEY



MICHAEL P. O'GRADY #0023796
Assistant United States Attorney
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(614) 469-5715

Copies to:

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Michael P. O'Grady, Assistant United States Attorney,
Two Nationwide Plaza, 4th Floor, 280 N. High Street,
Columbus, OH 43215

Alexander G. Barkan, Office of the U.S. Trustee
170 North High Street, 2nd Floor, Columbus, OH 43215

Frank M. Pees, Trustee, 130 E. Wilson Bridge Road,
Suite 200, Worthington, OH 43085

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 UNITED STATES OF AMERICA,)

4 Plaintiff,)

5 vs.)

6 CAROLYN A. SHARP a/k/a)
7 CAROLYN HARLEY)

8 Defendant.)

CV-S-04-1401-RLH(LRL)

9 STATE OF NEVADA)

10 COUNTY OF CLARK)

) ss:

11 IT IS HEREBY CERTIFIED THAT:

12 I, Kim Bush, deposited in the United States Mail at Las Vegas, Nevada, a copy of
13 **PLAINTIFFS RESPONSE TO DEFENDANTS EMERGENCY MOTIONS FOR ORDER TO**
14 **SET ASIDE ORDER FOR SUPPLEMENTARY PROCEEDINGS FOR JUDGMENT**
15 **DEBTOR EXAMINATION AND PLAINTIFFS MOTION TO VACATE JUDGMENT**
16 **DEBTOR EXAMINATION**, upon Gordon & Silver, Ltd., Eric R. Olsen, 3960 Howard Hughes
17 Pkwy, 9th Floor, Las Vegas, Nevada 89109, at which place(s) there is delivery service of mail
18 from the United States Postal Service, by placing the above in the United States Mail, clearly
19 addressed and postage prepaid.

20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed this 7th day of February, 2005.

22 

23 KIM BUSH
24 Legal Assistant
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