

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

EDWIN NWAEFULU, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 98-0360  
 )  
 DEPARTMENT OF EDUCATION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on May 13, 1998, at Miami, Florida, and on June 10, 1998, via telephone between Tallahassee, Florida, and Miami, Florida, before Claude B. Arrington, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Edwin Nwaefulu, pro se  
Post Office Box 680471  
Miami, Florida 33168

For Respondent: Ronald G. Stowers, Esquire  
Department of Education  
The Capitol, Suite 1701  
Tallahassee, Florida 32399-0400

STATEMENT OF THE ISSUES

Whether Petitioner has defaulted on student loans and, if so, the principal amounts of the loans, any accrued interest, and any collection costs. Whether Petitioner's employer should be required to withhold payments from Petitioner's pay pursuant to Section 112.175, Florida Statutes.



PRELIMINARY STATEMENT

By letter dated October 1, 1997, Respondent advised Petitioner that his student loans were held by the Respondent and that those loans were in default. Petitioner was advised as to the amounts of the loans, the amounts of the claimed interest, and that an involuntary wage withholding proceeding pursuant to Section 112.175, Florida Statutes, would be instigated if a voluntary withholding agreement was not reached. Petitioner timely disputed the proposed agency action, and the matter was referred to the Division of Administrative Hearings for formal proceedings.

The formal hearing began in Miami, Florida on May 13, 1998. During the course of the hearing, the Petitioner represented that he was too ill to proceed. Consequently, the hearing was continued. The hearing resumed by telephone on June 10, 1998, with the Petitioner participating from Miami, Florida.<sup>1</sup> At the formal hearing, Respondent presented the testimony of one witness, who was employed by Respondent's Office of Student Financial Assistance, and presented a total of nine exhibits, each of which was accepted into evidence. Petitioner did not present any testimony or exhibits.

A transcript of the proceedings has been filed. The Respondent filed a Proposed Recommended Order, which has been duly considered by the undersigned in the preparation of this Recommended Order. Petitioner did not timely file a proposed

recommended order.

FINDINGS OF FACT

1. As will be set forth in more detail, there are three loans at issue in this proceeding. For ease of reference, these loans will be referred to as Loans One, Two, and Three.<sup>2</sup>

2. Loans One and Three were issued as Florida Guarantee Student Loans, which are popularly known as Stafford Loans. Loans Two and Four were supplemental loans issued by the Student Loan Services program, which are referred to SLS loans. Loans One, Two, and Three were funded and are at issue in this proceeding.

THE STAFFORD LOANS, LOANS ONE AND THREE

3. On September 22, 1986, Petitioner executed an Application and Promissory Note for a Guaranteed Student Loan, number 545967. This Stafford Loan, referred to as Loan One, was in the amount of \$5,000. Loan One was disbursed in two equal installments of \$2,500 (less appropriate fees). The first installment was disbursed on or about December 4, 1986, and the second installment was disbursed on or about December 11, 1986.

4. On June 1, 1987, Petitioner executed an Application and Promissory Note for a Guaranteed Student Loan, number 586917. This Stafford Loan, referred to as Loan Three, was in the amount of \$2,261.00. Loan Three was disbursed in one installment of \$2,261.00 (less appropriate fees) on June 25, 1987.

5. The promissory notes and other paper work documenting Loan One and Loan Three provided that interest at the rate of

8% per annum would begin to accrue on these loans six months after Petitioner ceased to attend school on at least a half-time basis. Because a Stafford Loan is guaranteed by the federal government, the obligor may be eligible to receive periods of deferment and periods of forbearance during which the federal government may or may not make interest payments. If the federal government made interest payments during a particular period, Petitioner is not obligated for interest during that period. If the federal government did not pay interest during a particular period, Petitioner is obligated to pay interest for that period. Respondent is not claiming any interest on Loans One and Three for any period while interest was paid by the federal government.

6. While Petitioner was attending school on at least a half-time basis and for six months thereafter (the grace period), Loans One and Three were in periods of forbearance, and the federal government paid the interest for both loans. Petitioner ceased attending school on at least a half-time basis on March 18, 1988. The six month grace period on Loans One and Three ended on September 18, 1988, which is the date interest began to accrue on Loans One and Three. As of that date, the principal balance due on Loan One (\$5,000.00) and on Loan Three (\$2,261.00) totaled \$7,261.00.

7. Between September 18, 1988, and January 23, 1997, interest accrued on Loans One and Three in the total amount of \$4,744.75, as follows:

A. Between September 18, 1988, and June 15, 1993, interest accrued on these two loans in the total amount of \$2,754.80.

B. Between June 16, 1993, and October 6, 1993, interest accrued on these two loans in the total amount of \$245.87. Both loans were

in a period of administrative forbearance, but the federal government did not pay the interest.

C. Between October 7, 1993, and January 7, 1994, both loans were in a period of deferment due to Petitioner's unemployment, and the interest was paid by the federal government.

D. Between January 8, 1994 and January 31, 1994, interest accrued on these two loans in the total amount of \$51.73. Both loans were in a period of administrative forbearance, but the federal government did not pay the interest.

E. Between February 1, 1994, and April 30, 1994, both loans were in a period of deferment due to Petitioner's unemployment, and the interest was paid by the federal government.

F. Between May 1, 1994, and July 24, 1994, interest accrued on these two loans in the total amount of \$189.88. Both loans were in a period of administrative forbearance, but the federal government did not pay the interest.

G. Between July 25, 1994, and April 30, 1995, both loans were in a period of deferment due to Petitioner's unemployment, and the interest was paid by the federal government.

H. Between May 1, 1995, and December 1, 1995, interest accrued on these two loans in the total amount of \$492.65. Both loans were in a period of forbearance, but the federal government did not pay the interest.

I. Between December 2, 1995, and January 23, 1997, interest accrued on these two loans in the total amount of \$1,009.82.

8. Petitioner defaulted on the repayment of Loan One.

Petitioner has not made any principal or interest payment since the loan was disbursed.

9. Petitioner defaulted on the repayment of Loan Three.

Petitioner has not made any principal or interest payment since the loan was disbursed.

10. On January 23, 1997, Respondent purchased Loan One and Loan Three.<sup>3</sup>

11. As January 23, 1997, the principal and the accrued interest for Loan One, plus the principal and the accrued interest for Loan Three, totaled \$12,005.75.

THE SLS LOAN: LOAN TWO

12. On January 31, 1987, Petitioner executed Auxiliary Loan Application and Promissory Note number 8914 for a supplemental student loan through the Student Loan Services program (Loan Two). This type loan, generally referred to as an SLS loan, was in the principal amount of \$4,000.00. Loan Two was disbursed in one installment of \$4,000.00 (less appropriate fees) on or about April 9, 1987.

13. The promissory notes and other paper work documenting Loan Two provided that interest at the rate of 12% per annum would begin to accrue upon disbursement. SLS loans also provide for periods of deferment and forbearance during which no payment is due. The federal government does not make interest payments during a period of deferment or forbearance. The borrower is obligated to pay all of the interest from date of disbursement.<sup>4</sup>

14. Petitioner defaulted on the repayment of Loan Two. Petitioner has not made any principal or interest payment since the loan was disbursed.

15. Respondent purchased Loan Two from the holder on September 11, 1997.<sup>5</sup> Interest in the amount of \$7,348.91 accrued

on Loan Two between April 9, 1987, the date the loan was disbursed, and September 11, 1997. The total principal balance and accrued interest for Loan Two as of September 11, 1997, was \$11,348.91.

COLLECTION COSTS

16. Section 682.410(b)(2) of Title 34, C.F.R., provides that Respondent shall impose collection costs, as follows:

(2) Collection charges. Whether or not provided for in the borrower's promissory note and subject to any limitation on the amount of those costs in that note, the guaranty agency shall charge a borrower an amount equal to reasonable costs incurred by the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These costs may include, but are not limited to, all attorney's fees, collection agency charges, and court costs. Except as provided in §§ 682.401(b)(27) and 682.405(b)(1)(iv), the amount charged a borrower must equal the lesser of--

(i) The amount the same borrower would be charged for the cost of collection under the formula in 34 CFR 30.60; or

(ii) The amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

17. Respondent established that the amount of the annual collection cost mandated by 34 C.F.R. 682.410(b)(2) for each defaulted loan at issue in this proceeding should be calculated at the rate of 25% of the outstanding principal and accrued interest.

PRINCIPAL, INTEREST, AND COLLECTION COSTS AS OF JUNE 1, 1998

18. Respondent calculated the principal, interest, and

collection costs for each loan as of June 1, 1998.

19. For Loan One the amount of the collection costs assessed by the Respondent was \$2,231.60. Interest that accrued between January 23, 1997, and June 1, 1998, totaled \$895.13. As of June 1, 1998, the total principal, interest, and collection costs for Loan One totaled \$11,394.01.

20. For Loan Two the amount of the collection costs assessed by the Respondent was \$2,961.20. Interest that accrued between September 11, 1997, and June 1, 1998, totaled \$981.29. As of June 1, 1998, the total principal, interest, and collection costs for Loan One totaled \$15,291.39.

21. For Loan Three the amount of the collection costs assessed by the Respondent was \$1,009.13. Interest that accrued between January 23, 1997, and June 1, 1998, totaled \$404.78. As of June 1, 1998, the total principal, interest, and collection costs for Loan One totaled \$5,152.39.

22. The total amount due from Petitioner as of June 1, 1998, for Loans One, Two, and Three for principal, interest, and collection costs is \$31,837.79.

WAGE WITHHOLDING

23. Petitioner is a social worker employed by Dade County, a political subdivision of the State of Florida.

24. As an employee of a political subdivision of the State of Florida, Petitioner is subject to the provisions of Section 112.175, Florida Statutes, and Chapter 28-40, Florida

Administrative Code. These provisions pertain to employees of the State of Florida or its subdivisions who have defaulted on an education loan made or guaranteed by the State of Florida.

25. Respondent notified Petitioner in writing by letter dated October 1, 1997, that Loans One, Two, and Three were in default and offered him the opportunity to make voluntary payments on these loans. The letter also advised Petitioner that the Respondent would seek to make involuntary withholdings if he did not make voluntary payments. Petitioner thereafter elected to request the formal hearing that triggered this proceeding.

#### CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction of the parties to and the subject of this proceeding. Section 120.57(1), Florida Statutes.

27. Section 112.175, Florida Statutes, provides, in pertinent part, as follows:

Employee wages; withholding to repay educational loan.-

(1)(a) Any person who has received an educational loan made or guaranteed by the state or any of its political subdivisions and who at any time becomes or is an employee of the state or any of its political subdivisions shall be deemed to have agreed as a condition of employment to have consented to voluntary or involuntary withholding of wages to repay such loan. Any such employee who has defaulted or does default on the repayment of such loan shall, within 60 days after service of a notice of default by the agency holding the loan to the employee and the employing agency, establish a loan repayment schedule which shall be agreed to by both the agency holding the loan

and the employee for repaying such defaulted loan through payroll deductions. Under no circumstances may an amount in excess of 10 percent per pay period of the pay of such employee be required by the agency holding the loan as part of a repayment schedule or plan. If such employee fails to establish a repayment schedule within the specified period of time or fails to meet the terms and conditions of the agreed to or approved repayment schedule as authorized by this subsection, such employee shall be deemed to have breached an essential condition of employment and shall be deemed to have consented to the involuntary withholding of wages or salary for the repayment of the loan.

(b) No person who is employed by the state or any of its political subdivisions on or after October 1, 1986, may be dismissed for having defaulted on the repayment of an educational loan made or guaranteed by the state or any of its political subdivisions.

(2) The Administration Commission shall adopt rules to implement this section, which shall include, but not be limited to, a standard method of calculating amounts to be withheld from employees who have failed to establish a repayment schedule within the specified period of time or failed to meet the terms and conditions of the agreed to or approved repayment schedule provided for in this section. Such method shall consider the following factors:

(a) The amount of the loan which remains outstanding;

(b) The income of the employee who owes such amount; and

(c) Other factors such as the number of dependents supported by the employee.

28. Pursuant to Section 112.175(2), Florida Statutes, the Administration Commission has adopted Chapter 28-40, Florida Administrative Code, to implement Section 112.175, Florida Statutes. Respondent has complied with the procedural

requirements of those rules.

29. Rule 28-40.006, Florida Administrative Code, provides the procedures that must be followed before an involuntary withdrawal from a person's pay pursuant to Section 112.175(2), Florida Statutes, will be permitted. Respondent has followed those procedures in this proceeding.

30. Rule 28-40.007, Florida Administrative Code, provides the methodology to be followed in calculating the amount of the involuntary withholding.

31. The total due for Loans One, Two, and Three as of June 1, 1998, is \$31,837.79. Respondent is entitled to make involuntary withdrawals from Petitioner's pay pursuant to the provisions of Section 112.175, Florida Statutes, and Chapter 28-40, Florida Administrative Code. The amount of the withdrawals should be calculated pursuant to Rule 28-40.007, Florida Administrative Code. Interest will continue to accrue on these debts as provided by law.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent enter a Final Order that adopts the findings of fact and conclusions of law contained herein, finds that Petitioner, as of June 1, 1998, owes the sum of \$31,837.79, and orders the involuntary wage withholding of Petitioner's pay through his employer, Dade County, Florida, pursuant to Section 112.175, Florida Statutes, and Chapter 28-40,

Florida Administrative Code.

DONE AND ENTERED this 7th day of August, 1998, in  
Tallahassee, Leon County, Florida.

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CLAUDE B. ARRINGTON  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847

Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th day of August, 1998

ENDNOTES

1/ The hearing for June 10, 1998, was scheduled for video. Prior to the start of the hearing, the Petitioner informed the undersigned by telephone that he was too ill to attend the video site, but that he wished to proceed by telephone. Petitioner knowingly waived his right to testify (because there was no notary to swear him as a witness) and to present documentary evidence.

2/ Petitioner made application for a SLS Loan, numbered 13214 (Loan Four) for the period August 25, 1987, through May 1, 1988. The application was for the sum of \$4,000. This loan was not funded and is not at issue in this proceeding. The only reason Loan Four is mentioned is the erroneous reference to that loan number by one of the exhibits.

3/ There is a reason that these notes were not purchased by Respondent until January 23, 1997. On July 16, 1989, the lender lost the guarantee on Loans One and Three because the lender had failed to exercise due diligence in collecting the loans. Respondent failed to pay the lender for the loans as long as the lender did not have the guarantee. On June 15, 1993, the loss of guarantee was cured. From June 16, 1993, to December 1, 1995, Loans One and Three were in various periods of deferment or forbearance. After December 1, 1995, the two loans went back into repayment status. The first installment (referred to as the Final Due Date of the First Unpaid Installment) was due

January 1, 1996, one month after the last period of forbearance expired. No payment was received. Respondent purchased the two loans from the holder thereof on January 23, 1997.

4/ Loan Two was in various periods of deferment or forbearance. It is not necessary to set forth these periods because interest accrued on Loan Two during either period.

5/ The reason that the Respondent did not purchase Loan Two until September 1997 is that the lender had lost the guarantee for a period of time, the guarantee was subsequently reinstated, and the loan was thereafter placed in periods of forbearance or deferment. As with Loans One and Three, Loan Two was placed back in repayment status on December 1, 1995, and the first installment was due January 1, 1996.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.