

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

LAURIE ELDRIDGE

BK 90-13526 K

Debtor

LAURIE ELDRIDGE

Plaintiff

-vs-

AP 91-1125 K

NEW YORK STATE HIGHER EDUCATION
SERVICES CORPORATION

Defendant

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This adversary proceeding was filed by the Chapter 13 debtor, Laurie Eldridge, on April 22, 1991. This action was commenced in order to determine the dischargeability of a student loan. The debtor alleges that her obligation to the defendant, Norstar Bank, N.A., which is guaranteed by the New York State Higher Education Services Corporation (NYSHESC), is dischargeable under the provisions of section 523(a)(8)(B) of the Bankruptcy

Code. 11 U.S.C. § 523(a)(8)(B). The matter came on for trial on November 13, 1991, at which time the debtor testified on her own behalf.

This Court has jurisdiction of the parties and the subject matter by virtue of a general order of reference entered in the United States District Court for the Western District of New York pursuant to section 157(a), Title 28 U.S.C. This cause of action is a core matter as that term is defined by section 157(b), Title 28 U.S.C.

As stated by counsel for NYSHESC at closing argument, the law governing dischargeability of student loans under 11 U.S.C. § 523(a)(8)(B) in this Circuit is set forth in *Brunner v. NYSHESC*, 831 F.2d 395 (2 Cir. 1987).

That was a "Per Curiam" decision affirming the Order of the District Court (46 B.R. 752) reversing the Bankruptcy Court's decision discharging a student loan. The facts of the *Brunner* case (as set forth in the District Court's opinion) are readily distinguishable from the case at Bar.

Brunner obtained a Bachelor's degree in Psychology in 1979 and a Master's degree in Social Work in 1982. Ms. Eldridge's higher education consisted of three semesters at Erie Community College; she obtained no degree.

Brunner filed a Chapter 7 case within a month after the date on which the first payment of her student loans came due, never having requested a deferment. Ms. Eldridge sought and

obtained one deferment; was late seeking a second deferment; filed a Chapter 13 after Norstar Bank froze her bank account because the loan had fallen into default; and she is paying \$ 69.00 per month to the Chapter 13 Trustee pursuant to her Chapter 13 plan.

Brunner spent her \$2400 life savings two months prior to the trial on her section 523 complaint to purchase, register and insure an automobile. Ms. Eldridge has made no unusual purchases; her 1977 Ford remains off the road because she cannot afford to insure or register it; and she relies on public transportation.

Brunner's evidence of being unable to find any work at all, even outside her chosen field, was labelled as "too thin" by the District Court. Ms. Eldridge has been fully and gainfully employed at a variety of jobs in recent years and except for a period of time when she substituted for her ill mother at her mother's job (at an annualized rate of pay of \$10,200), has uniformly earned rates of pay only in the \$7800-\$8000 per year range.

Brunner provided no significant evidence of income and expenses. Ms. Eldridge's budget is as follows:

Monthly take-home pay \$ 688.00

Expenses :

Rent	265.00
Food	175.00
Utilities (phone)	25.00
Clothing	35.00
Laundry	10.00
Gifts	20.00
Medical and drug expenses	20.00

Insurance (auto)(when on road)	50.00	
Transportation	80.00	
Recreation	35.00	
Personal care	25.00	
Misc. (emergency)	50.00	
Tobacco	<u>64.00</u>	
		<u>923.00</u>
Balance		\$-235.00

(She is foregoing the auto., medical care, and other needs currently.)

There are only two regards, in fact, in which Ms. Brunner and Ms. Eldridge are similarly situated.

1. Ms. Eldridge is currently unemployed and is actively seeking employment, as was Ms. Brunner.

2. Ms. Eldridge, 31 years of age, is apparently healthy, unmarried, has no dependents or extraordinary burdens which would impair her future earning ability or future expenses, as was the case with Ms. Brunner.

There the similarities end. Ms. Eldridge completed only three semesters of accounting. This has proven to be insufficient formal training to provide her with employment in that field or a related field. Ms. Brunner's two degrees certainly qualified her for employment in Social Work or Psychology.

Ms. Eldridge left school twice; the first to help her parents and the second because of her inability to face her studies after the stresses of having then been involved with a mentally and physically abusive boyfriend. She would like to return to school but cannot afford to do so.

She has proven successful in obtaining and holding jobs in food service, at a rate of pay of approximately \$8000 per year. At \$8000 per year income, she is able to survive at only a minimum level of subsistence, yet is paying \$ 69.00 per month to the Chapter 13 Trustee.

Though unemployed and living alone, she is receiving assistance from a friend until she finds another job.

The student loan constitutes approximately \$7000 of \$21,000 total debt scheduled in her Chapter 13 case.

She is unlikely to earn significantly more than \$8000 per year or to significantly reduce her expenses in the foreseeable future. Her monthly expenses are reasonable.

In the Brunner case, the Circuit enunciated the following three-part showing for an "undue hardship" discharge of a student loan:

- (1) that the debtor cannot maintain, based on current income and expenses, a 'minimal' standard of living for herself and her dependents if forced to repay the loans;
- (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
- (3) that the debtor has made good faith efforts to repay the loans.

It affirmed the District Court's conclusion that Ms. Brunner had passed the first test but failed the second and third.

I conclude that Ms. Eldridge is currently unable to maintain a "minimal" standard of living and continue in Chapter 13

and repay the loans.

I further conclude that her earnings history and expense history establish that this situation will not improve in the foreseeable future despite the fact that she suffers no extraordinary burden of age, infirmity, or dependents. It is that history which distinguishes the facts of this case from those of the *Brunner* case, and provide the "additional circumstances" required by *Brunner*.

I finally conclude that her failure to make any payments on the loans before or after filing the Chapter 13 was a result of inability to pay (not a failure of "good faith"), in light of her earnings, reasonable expenses, and her overall debt.

Ms. Eldridge passes all three tests. The loan is discharged. It is SO ORDERED.

Dated: Buffalo, New York
November 21, 1991

/S/ MICHAEL J. KAPLAN

U.S.B.J.