

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re

MARY E. MARTIN,

Debtor.

CASE NO. 93-20701

DECISION & ORDER

MARY E. MARTIN,

Plaintiff,

vs.

A.P. NO. 93-2163

**NEW YORK STATE HIGHER EDUCATION
SERVICES CORPORATION, AFSA DATA CORP.**

BACKGROUND

On March 30, 1993, Mary E. Martin (the "Debtor") filed a petition initiating a Chapter 13 case. On the same date, the Debtor filed a Chapter 13 plan (the "Plan") which proposed to pay the Chapter 13 Trustee \$20.00 per month for a period of sixty (60) months with all allowed unsecured claimants to receive a pro rata dividend.

On July 2, 1993, the Debtor commenced an adversary proceeding against the New York State Higher Education Services Corporation and AFSA Data Corporation (collectively as "New York Higher Education") to have her debt to them, which she had scheduled to be in the approximate amount of \$13,300.00, determined to be dischargeable pursuant to Section 523(a)(8)(B), alleging that excepting the debt from discharge would impose an undue hardship upon her.

New York Higher Education interposed an Answer and served Interrogatories and a Request for Production of Documents upon the Debtor which were responded to by the Debtor. The Court conducted pretrial conferences in this adversary proceeding on September 23, 1993, October 26, 1993, and November 23, 1993. On December 22, 1993, the matter was set down for trial on January 14, 1994. However, on January 13, 1994, the parties filed a joint Stipulation of Facts (the

"Stipulation of Facts") and submitted the matter for decision by the Court.

DISCUSSION

The Stipulation of Facts indicates that: (1) the Debtor did receive an Associate's Degree in Liberal Arts from Monroe Community College in May, 1988; (2) since her graduation, the Debtor has been unemployed and for a number of years has been receiving Social Security Disability, Medicaid, food stamps and Section 8 housing assistance; (3) the Debtor is a counseling client of the University of the State of New York/Office of Vocational and Education Services for Individuals with Disabilities ("VESID") where she has been counseled to set a vocational goal of "homemaker;" (4) the Debtor is in individual therapy at the Steuben County Community Health Center; (5) the Debtor suffers from several ongoing medical problems, including degenerative arthritis in her knees, morbid obesity, chronic asthma, hypo-active thyroidism and fibromyalgia; (6) VESID reports that its evaluation revealed the Debtor suffers from chronic depressive feelings and has suicidal thoughts; (7) the Debtor has no present employment prospects because of her physical and psychological conditions; and (8) there exists no indication of any likely change in the Debtor's state of affairs.

In the Second Circuit, for the Court to except a student loan from discharge pursuant to Section 523(a)(8)(B) as imposing an undue hardship, it is necessary that the Debtor meet the three-part test established in *Brunner v. New York State Higher Education*, 831 F.2d 395 (2nd Cir. 1987). This test has been summarized by Chief Bankruptcy Judge Michael J. Kaplan in the matter of *In re Kraft*, _____ B.R. _____, 1993 WL 500258 (Bankr. W.D.N.Y. September 21, 1993) as:

[A] Debtor seeking to discharge an education loan must show:

1. That the Debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself (and any dependents) if forced to repay the loans;

2. That additional, exceptional circumstances exist, strongly suggestive of continuing inability to repay over an extended period of time, or indicating a likelihood that her current inability will extend for a significant portion of the loan repayment period; and
3. That the Debtor has made good faith efforts to repay the loans.

On the facts and circumstances of this case, the Court finds that the Debtor has met the three-part test established in *Brunner*. The Debtor has not for some time been able to and cannot now maintain a minimal standard of living and repay the loan due to New York Higher Education; the Debtor's physical and psychological condition make it unlikely that she will ever be able to maintain a minimal standard of living and repay the loan; and these facts together with the Debtor's Chapter 13 Petition and Plan, which may result in some payments to creditors, including New York Higher Education, satisfies the requirement that there be a good faith effort to repay the loan.

CONCLUSION

The amounts due from the Debtor to New York Higher Education are discharged pursuant to Section 523(a)(8)(B) except to the extent of any pro rata dividends which New York Higher Education may receive as an unsecured creditor under the Debtor's Chapter 13 Plan if confirmed by the Court.

IT IS SO ORDERED.

/s/
HON. JOHN C. NINFO, II
U.S. BANKRUPTCY COURT JUDGE

Dated: January 20, 1994