UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

ANNE C. STRATTON — Case No. 91-12246 K

Debtor

ANNE C. STRATTON

Plaintiff

-vs- — AP 91-1285 K

NEW YORK STATE HIGHER EDUCATION SERVICES CORPORATION

Defendant

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In this Adversary Proceeding, which has been submitted for decision on stipulated facts, the Debtor seeks to discharge her student loans on the basis of hardship. The Court finds that the Debtor meets the three prong test set out by the Second Circuit under *Brunner v. New York State Higher Educ. Services Corp.*, 831

F.2d 395 (2d Cir. 1987). Accordingly, the Debtor is discharged from her student loan obligations.

FACTS

The parties have stipulated to the essential facts of this case. The Debtor is a 41 year old divorced female with no dependents. As a consequence of various trauma in 1987 or 1988, she suffers from ongoing mental illness for which she receives medical treatment. Her medical condition may stabilize, but not in the "near future." Ms. Stratton receives public assistance and is currently unable to work due to her condition. She has a Bachelor of Fine Arts degree, and did not complete work on her Masters Degree because of the traumatic events. From time to time she has been able to perform at low-paying jobs. Student loans are $21,000 of her scheduled debt. She also lists $4100 in unpaid medical bills and $1600 in credit card debt.

The State concedes the first prong of *Brunner*, in that the Debtor is unable to meet a minimal standard of living. On the other hand, the State argues that the Debtor fails the second prong of *Brunner* as she "has not demonstrated that her [illness] will persist for a significant portion of the ten year repayment period of her loans." The State misinterprets the *Brunner* holding. *Brunner* does not require that the Debtor prove that her disability will last a significant time into the future. Rather it requires

that she prove that because of her condition, her inability to pay the student loan debt will so last. Although there is hope here that the Debtor's condition will sufficiently stabilize to permit her to return to some job at some point beyond the "near future," there is no suggestion that when that happens she will suddenly be able to qualify for or hold a job that is sufficiently high paying as to permit, without undue hardship, repayment of $21,000 in loans. This Court is satisfied that the stipulated facts demonstrate "additional, exceptional circumstances, strongly suggestive of continuing inability to repay over an extended period of time." *Brunner* at 396.

The State also argues that the Debtor does not meet the "good faith" test of *Brunner* as she still has deferments available to her of which she has not taken advantage. *Brunner* does not require that the Debtor exhaust all possible remedies before seeking discharge in bankruptcy, but simply that a good faith effort be made to repay the debt. Unlike the debtor in the case at Bar, Ms. Brunner filed bankruptcy within a month of her first student loan payment becoming due. In this case, the Debtor did seek and obtain at least one deferment and made small payments to the Bank as addressed below. This demonstration of good faith on her part is not turned into a lack thereof because of the fact that she filed for bankruptcy at a time when further deferments might be available. The Court finds that the Debtor meets the "good faith" prong of *Brunner*.

We must not lose sight of the fact that the initial concern of Congress regarding the dischargeability of student loans was that "Some individuals have financed their education and upon graduation have filed petitions under the Bankruptcy Act and obtained a discharge without any attempt to repay the educational loan and without the presence of any extenuating circumstance, such as illness."[1] The House version of the Reform Act did not contain a provision excepting student loans from discharge despite "a few serious abuses of the bankruptcy laws by Debtors with large amounts of educational loans, few other debts, and well-paying jobs, who have filed bankruptcy shortly after leaving school and before any loans become due."[2]

Ms. Stratton was forced to leave school after the trauma of rape, has suffered a drug overdose in the hospital, has attempted suicide, receives anti-psychotics, anti-depressants and a mood stabilizer, has been in and out of hospitals, and has received Social Security Disability payments but nonetheless has tried to work as a sales clerk, as a part-time relief worker in a group home, as a chambermaid and as a production assistant. She suffers from bi-polar illness, manic depression, generalized

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[1]Report of the Commission, H.R. Doc. #93-137, 93rd Congress, 1st Sess., p. 176 (1973).

[2]House Report No. 95-595, To accompany H.R. 8200, 95th Cong., 1st Sess., p. 133 (1977).

anxiety disorder and panic attacks, but has sought one deferment, made some small payments, and hopes that in the "not so near future" her medical condition will stabilize sufficiently for her to again hold some type of job. She is not the kind of debtor the exception to discharge was created for.

The Debtor's student loans are hereby declared to be dischargeable by reason of hardship.

IT IS SO ORDERED.

Dated: Buffalo, New York
February 26, 1993

/S/ MICHAEL J. KAPLAN

U.S.B.J.