

JUDGE HERB ROSS (Recalled)

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA
605 West 4th Avenue, Room 138, Anchorage, AK 99501-2296 - (Website: www.akb.uscourts.gov)
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Filed On
7/10/07

Case No. 3-87-00566-HAR
In re GWEN M. ANAGICK,
Debtor(s)
GWEN ANAGICK-WALTERS,
Plaintiff(s)
v.
ALASKA COMMISSION ON
POSTSECONDARY EDUCATION,
Defendant(s)

In Chapter 7

Adv Proc No A07-90010-HAR

MEMORANDUM REGARDING
GRANTING OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

The defendant, ACPE, filed a motion for summary judgment (Dkt 10) pursuant to a pre-trial conference order (Dkt 9), and plaintiff has not responded.

I have reviewed the motion and find that ACPE has established that there are no material facts in dispute and that it is entitled to a summary judgment of non-dischargeability for the amount claimed. That amount is \$9,161.85 in principal, plus interest at 5% from August 6, 1997 (the date of a Default Judgment by Clerk of Court in Case No. 4FA-96-1040CI in the District Court for the State of Alaska, Fourth Judicial District), interest accrued through June 1, 2007, in the amount of \$3,238.78 (ACPE voluntarily reduced the judgment rate of 11% to 5% and has waived attorney fees awarded it). This totals \$12,400.63 as of June 1, 2007, plus \$1.2550 per day after that.

1 I am basing the summary judgment on the first legal argument of ACPE, that the amount owed
2 was simply not discharged by plaintiff's 1987 bankruptcy.¹ Thus, the amount sought is non-
3 dischargeable pursuant to 11 USC § 523(a)(8) as it existed in 1987, when plaintiff filed her first
4 bankruptcy petition. The subsequent bankruptcy case also does not warrant that the claim be
5 declared non-dischargeable.

6 In addition to the cases ACPE cites for the proposition that the non-dischargeability of student
7 loans under 11 USC § 523(a)(8) is self-executing² should be added *In re Hoxie*, ___ BR ___, 2007
8 WL 4572868 (SD Cal 2006), which cited *Tenn. Student Assistance Corp. v Hood*, 541 US 440, 450
9 (2004). Much of plaintiff's reasoning seems to be based on the erroneous impression that ACPE
10 dropped the ball in the first bankruptcy by not establishing non-dischargeability; this theory is
11 incorrect because non-dischargeability was self-executing.

12 DATED: July 10, 2007

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15 /s/ Herb Ross
16 HERB ROSS
U.S. Bankruptcy Judge

17 Serve:

18 Gwen Anagick-Walters, *pro se* π
19 Mary Ellen Beardsley, Asst. Atty. Gen'l., for Δ
20 Peggy Gingras, Adv. Proc. Mgr.
21 7/10/07

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24 ¹The legal basis for this argument is found at pages 7-11 of *ACPE's Memorandum in Support of Motion*
25 *for Summary Judgment* (Dkt 11). I have not based my ruling on the laches argument made by ACPE *See*,
ACPE's Memorandum (Dkt 11) at pages 11-16.

26 ²*See*, ACPE's Memorandum (Dkt 11) at page 7.