

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 01-12110-JMD
Chapter 7

Robin E. Boots,
Debtor

Robin E. Boots,
Plaintiff

v.

Adv. No. 01-1173-JMD

New Hampshire Higher Education Assistance Foundation, and
Sallie Mae Servicing Center
Defendants

Sandra A. Kuhn, Esq.
KUHN PROFESSIONAL CORPORATION
Attorney for Debtor/Plaintiff

Mark Weaver, Esq.
FORD AND WEAVER, P.A.
Attorney for New Hampshire Higher Education Assistance Foundation and Sallie Mae Servicing Center

MEMORANDUM OPINION

I. INTRODUCTION

On September 24, 2001, the Debtor filed the above captioned adversary proceeding seeking a discharge of her student loan obligations. On November 21, 2002, the Court held a one day trial regarding the discharge of the student loans and took the matter under submission.

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States

Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.).
This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. FACTS

The Debtor is seeking to discharge educational loans totaling approximately \$104,957.08.¹ The monthly payments on the loans are approximately \$602.83 with 272 payments remaining on the loan. As of the date of the trial the loan was held by New Hampshire Higher Education Assistance Foundation (the “Defendant”), guarantor of loans formerly held by Sallie Mae Servicing Corporation.

A. College and Work History

The Debtor is a fifty-four year-old woman who pursued a graduate degree later in life. The loan in question represents the financing of a law degree. In the fall of 1986, the Debtor, a thirty-nine-year-old divorced single parent of two minor children, borrowed money to attend law school at Franklin Pierce Law Center. She graduated in 1989 and passed the New Hampshire bar examination in 1990. The Debtor worked for the Disability Rights Center (“Disabilities Center”) as a law student during her attendance at Franklin Pierce Law Center and after graduation she worked there as a case advocate until she passed the N.H. Bar in May of 1990, when she was hired as a staff attorney. The Debtor worked in this position for approximately six years.

¹On the day of the trial the Debtor and HEMAR Insurance Corporation of America entered into a stipulation (Doc. No. 32) regarding an additional \$47,699.08 in educational loans. Under the terms of the stipulation, the Debtor would make payments of \$75.00 per month once her gross annual income reached \$37,500.00 with incremental increases thereafter as the Debtor’s income increased. The Court has entered an Order approving the stipulation (Doc. No. 35).

Between 1990 and 1993 she made all her loan payments to the Defendant on a timely basis. Plaintiff's Exhibit 33.

While working at the Disabilities Center, the Debtor was diagnosed as suffering from major clinical depression and in 1992 was hospitalized at Catholic Medical Center for three weeks. The Debtor continued to work full time at the Disabilities Center except for a two-month period of absence in the summer of 1993 due to depression and physical problems. By the spring of 1995 the Debtor's mental state had deteriorated and she became suicidal. She was hospitalized again, this time for two weeks. Following her hospitalization the Debtor was unable to return to the Disabilities Center and was officially discharged from her position in 1996.

Due to her various medical ailments, the Debtor encountered difficulty in securing employment as an attorney. Eventually, in October of 1996 she was hired as a temporary Casual Clerk for the United States Postal Service ("USPS"). The Debtor was hired as a temporary clerk to assist with the holiday mail season. In February of 1997, she transferred to another temporary position as a Relief Carrier. Shortly thereafter the Debtor was promoted to a Rural Carrier Associate earning \$10.00 - \$11.00 per hour. Sometime in 1998 she was injured on the job and did not return to the USPS until 1999. The Debtor was then promoted to Regular Rural Carrier ("RCC") in March 2000. From 1999 to June 2003, the Debtor also taught school part time at the adult education department at Nashua High School. She was paid approximately \$17.00 per hour for three hours a week when she started and was making \$25.00 per hour when she left.

Initially, the Debtor's compensation as a RCC fluctuated due to mail flow changes and a move to a new mail route. Her pay now fluctuates based on her pay step level, the mail volume, job performance and route of delivery; however, she is guaranteed to make at least \$28,000. In 1999 the Debtor's adjusted gross income was \$3,399.00. Plaintiff's Exhibit 14. In 2000 the

Debtor's adjusted gross income was \$31,542.00. Plaintiff's Exhibit 13. In 2001 the Debtor's adjusted gross income was \$29,931.00. Plaintiff's Exhibit 12. The Debtor testified that she does not expect her income to rise dramatically. The Debtor expects to continue holding her current job and sees her situation as a long term position. She no longer works for Nashua High School and has no intentions of returning to teaching adult education courses.

B. Medical Issues

The Debtor testified that at least since graduating from Franklin Pierce she has been unhappy and that things have been bothering her. The Debtor indicated that she was hospitalized on two separate occasions since 1993. The Debtor was first hospitalized in 1993 for three weeks at Catholic Medical Center for clinical depression. The Debtor was next hospitalized in the spring of 1995 at the Hampstead Hospital. During this hospitalization the Debtor stayed for approximately two weeks during which she was admitted to the Lincoln Unit, a locked adult psychiatric unit where she received full psychopharmacological monitoring and management. Upon her release the treating psychologist prescribed Serazone, an antidepressant medication.

The Debtor currently continues her treatment for chronic major depression and sees a psychiatrist once every two months. Her current medications include Prozac, Doxepin and Klonopin. In addition to meeting with her psychiatrist, the Debtor meets regularly with a therapist in order to deal with her depression and anxiety on a day to day basis. The Debtor has provided uncontested reports from both of her treating mental health providers which unequivocally state that her depression is chronic, profound and intractable. Plaintiff's Exhibits 6 and 8. Both of the reports conclude that the Debtor will not be able to practice law again. See Plaintiff's Exhibits 6 and 8.

C. Expenses

The schedules filed by the Debtor show that she has approximately \$617.82 of negative income per month. See Plaintiff's Exhibit 1. At trial, several issues worth noting were raised with regards to the expenses listed on the Debtor's Schedule J. Id. The first matter addressed was the Debtor's car maintenance. Apparently the USPS does not provide its RCCs with transportation; RCCs must provide their own mode of transportation. However, the USPS does pay its RCCs \$.39 a mile. The Debtor has a twenty-nine mile rural mail route. The constant stop and go driving on back roads results in frequent break downs and repairs. When her vehicle is in for repairs she must rent a car to finish her route, at her own expense.

The next item in question related to the Debtor's life insurance. The Debtor testified that the \$54.00 monthly expense for life insurance was her modest attempt to leave something for her children and to cover her funeral expenses.

The Debtor's Answer to Interrogatory Number 10 indicates that she currently pays approximately \$146.00 per month for telephone service. See Plaintiff's Exhibit 3. The Debtor testified that she spends approximately \$80.00 per month for long distance charges. Her children no longer live in New Hampshire and the Debtor testified that it was essential for her state of mind to stay in contact with her children and grandchildren.

There was also a question regarding a \$140.00 expense listed on the Debtor's schedules relating to storage. The Debtor currently rents a suite of rooms from a friend and does not have the space for all her furniture and belongings, so she currently stores her furniture and miscellaneous items at a commercial storage facility.

Finally, there was a question regarding the Debtor's continued Bar membership. Even though she is no longer actively practicing law, the Debtor continues to pay her Bar dues and take the required CLE courses. The Debtor testified that passing the Bar was one of her crowning achievements and the thought of giving that up causes her stress and anxiety.

D. Repayment Efforts

The parties stipulated on the record that the Debtor had made a good faith effort towards repayment of the loan in question.

III. DISCUSSION

Under section 523(a)(8)² debtors are not permitted to discharge educational loans unless excepting the loans from discharge “will impose an undue hardship on the debtor and the debtor’s dependants.” In determining what constitutes undue hardship this Court has previously followed the three-part test set forth in Brunner v. New York State Higher Educ. Servs. Corp., 831, F.2d 395 (2nd Cir. 1995). See, e.g., McClain v. Am. Student Assistance, 272 B.R. 42, 47 (Bankr. D.N.H. 2002); Grigas v. Sallie Mae Servicing Corp., 252 B.R. 866, 874 (Bankr. D.N.H. 2000).

Under Brunner the Debtor is required to show:

1. That the Debtor cannot maintain, based on current income and expenses, a “minimal” standard of living for himself and his dependants 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

² Unless otherwise indicated, all references to “section” refer to Title 11 of the United States Code.

3. That the Debtor has made good faith efforts to repay the loans.

See McClain, 272 B.R. at 47; Grigas, 252 B.R. at 874.

A. The First Prong of the Brunner Test

In applying the test to the facts of this case, the Court finds that the Debtor has met the first prong of the test. The Debtor's schedules indicate that the Debtor does not have any surplus income. While the Defendant in this case took issue with various expenses that the Debtor listed, the Court finds the arguments to be unavailing.

The Court finds that the payments the Debtor is making for her car maintenance is necessary for employment and is not excessive. Clearly the Debtor needs a vehicle for her work. While the Debtor's phone expenses and Bar dues might seem high, she clearly does not live an excessive lifestyle. In addition, these expenses appear to be important to the Debtor maintaining sufficient emotional equilibrium to permit her to work regularly. Her yearly Bar dues and CLE course expenditures are minor. Her food, clothing and entertainment expenses are all relatively modest. If the Debtor chooses to spend more on her phone expenses rather than other types of discretionary spending the Court will not find fault with that.

The Court finds that the Debtor is currently maintaining a minimal standard of living and nothing more. Even while maintaining this minimal standard of living it is not possible for the Debtor to generate enough surplus income every month to repay her educational loan obligations. There are no arbitrary, bright line formulae which the Court may apply in this type of case. Rather, the Court must scrutinize the Debtor's expenses in view of her particular circumstances and determine whether the Debtor's aggregate expenses are beyond those necessary to maintain a minimal standard of living. See e.g. In re Woodman, 287 B.R. 589, 596 (Bankr. D. Maine 2003). In this case, the Court finds no such excess expenses. The Debtor has shown that she would not be

able to maintain a minimal standard of living if she were forced to repay the educational loans. Therefore, the Debtor has satisfied the first prong of the Brunner test.

B. The Second Prong of the Brunner Test

The Court must now turn to the second prong of the Brunner test. The second prong of the Brunner test requires the Debtor to show that her current circumstances are likely to persist for a significant portion of the repayment period. As noted above, the evidence clearly shows that repayment of her student loans would currently be a hardship for the Debtor. The evidence regarding the Debtor's future ability to repay her educational loan obligations is not so clear cut. The Court notes that while the Debtor has suffered from substantial health problems for the past several years, the evidence also indicates that prior to the onset of her health problems the Debtor was able to function in an advanced academic environment for a sustained period of years. Additionally, the Debtor was able to maintain steady employment as an attorney for a number of years.

While the Debtor's recent health problems have occurred during a relatively short time span, if the problems were permanent or likely to continue for the indefinite future, there would be an inability for the Debtor to pay her educational loan obligations without undue hardship for a significant portion of the repayment period. Accordingly, the Court must examine the evidence presented with regard to the expected extent of her recovery and the length of any such recovery. The Debtor's testimony indicates that she expects her health problems to continue into the future. Her testimony was corroborated by the medical reports from her mental health providers. The Defendant did not provide any evidence that the Debtor's medical condition will improve in the immediate future.

The Court also finds that the Debtor's yearly income will not dramatically increase anytime soon. The Court notes that the Defendant did not provide any credible evidence that given the Debtor's current medical condition, she is currently underemployed. Accordingly, the Court finds that the Debtor has met the second prong of the Brunner test.

C. The Third Prong of the Brunner Test

As mentioned above, the parties stipulated on the record that the Debtor had made a good faith effort towards repayment of the loan in question. Therefore the Debtor has satisfied the third prong of the Brunner test.

IV. CONCLUSION

As the Debtor has shown that she is not able to repay her educational loans and her current situation will continue for a substantial portion of the repayment period, the Court finds that the Debtor has met the requirements for discharging educational loans under section 523(a)(8). Accordingly, the Debtor's obligations to the Defendant will be discharged in this bankruptcy proceeding. This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate judgment consistent with this opinion.

DATED this 26th day of March, 2003, at Manchester, New Hampshire.

/s/ J. Michael Deasy
J. Michael Deasy
Bankruptcy Judge