20-648-bk
Channer v. Penn. Higher Educ. Assistance Agency

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this Court's Local Rule 32.1.1. When citing a summary order in a document filed with this Court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17th day of December, two thousand twenty.

PRESENT: JOSÉ A. CABRANES,
SUSAN L. CARNEY,
MICHAEL H. PARK,
Circuit Judges.

In re Lorna Y Channer,

Debtor.

LORNA Y. CHANNER,

Debtor-Appellant,

v.

PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY,

Appellee,

UNITED STATES,

Trustee.

20-648-bk

FOR DEBTOR-APPELLANT: AUSTIN C. SMITH, New York, NY.

FOR APPELLEE: IRVE J. GOLDMAN, Bridgeport, CT.

Appeal from a December 12, 2019 judgment of the United States District Court for the District of Connecticut (Kari A. Dooley, *Judge*), affirming order of the United States Bankruptcy Court for the District of Connecticut (James J. Tancredi, *Bankruptcy Judge*).

UPON DUE CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court be and hereby is **AFFIRMED**.

Debtor-Appellant Loma Y. Channer ("Channer") appeals the judgment of the United States District Court for the District of Connecticut entered on December 12, 2019, affirming the denial by the United

States Bankruptcy Court for the District of Connecticut of Channer's motion to reopen her Chapter 7 bankruptcy case pursuant to 11 U.S.C. § 350(b), which had been closed twice and already reopened once on Channer's motion.[1] We assume the parties' familiarity with the facts and the issues on appeal.

In 2007, Channer signed a Federal Consolidation Loan Application and Promissory Note to consolidate two federal student loans under the Federal Family Education Loan ("FFEL") Program. The Pennsylvania Higher Education Assistance Agency d/b/a American Educational Services ("PHEAA") was the guarantor.[2] In 2010, Channer sought relief under Chapter 7 of the United States Bankruptcy Code, listing her student loans in her bankruptcy petition.[3] On November 3, 2010, the Bankruptcy Court issued an order of discharge, and the case was administratively closed in August 2013.[4]

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[1] *In re Channer*, No. 19 Civ. 319, 2019 WL 6726397 (D. Conn. Dec. 11, 2019), *reconsideration denied*, 2020 WL 607188 (D. Conn, Feb. 7, 2020).

[2] At oral argument on appeal, counsel for Channer appeared to contest this fact. The District Court noted, "[Channer] now appears to dispute whether PHEAA guaranteed the student loans" but also noted "as [Channer] acknowledges, she identified PHEAA as the creditor for her "educational student loan." *Channer*, 2019 WL 6726397, at *1 n.3.

[3] On appeal, the parties agree that the debt at issue is identified by terminal digits -4788, and appears on Schedule E of the bankruptcy petition. Channer had mistakenly argued below that the debt was listed on Schedule F of the bankruptcy petition.

[4] In that discharge order, the Bankruptcy Court explained that there are "'[s]ome . . . common types of debts which are not

Some years later, in January 2019, Channer filed a motion to reopen, in order to pursue (1) a motion for relief from judgment or order under Federal Rule of Bankruptcy Procedure 9024 and (2) an amended motion to show cause, to which PHEAA objected.[5] After a hearing, the Bankruptcy Court issued a decision denying Channer's motion to reopen,[6] which was affirmed by the District Court.[7]

A bankruptcy court may reopen a case "to administer assets, to accord relief to the debtor, or for other cause."[8] We have jurisdiction under 28 U.S.C. § 158(d)(1) to review final decisions of the district court that, in turn, review an order of the bankruptcy court.[9] As the district court itself is operating as an appellate court, we engage in plenary, or *de novo*, review of the district

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discharged in a chapter 7 bankruptcy case,' which include '[d]ebts for most student loans.'" *Channer*, 2019 WL 6726397, at *1 (quoting and citing Discharge Order at 2, ¶ d, *In re Channer*, No. 1021232 (Bankr. D. Conn. Nov. 3, 2010), ECF No. 64).

[5] As the Bankruptcy Court noted, "[u]ltimately, [Channer] seeks for the Court to hold [PHEAA] in contempt due to its efforts to collect what [Channer] claims are discharged debts." *In re Channer*, No. 1021232, 2019 WL 856247, *1 (Bankr. D. Conn. Feb. 20, 2019).

[6] *Id.* After rejecting the grounds upon which Channer sought to pursue contempt sanctions, the Bankruptcy Court thus concluded that there was no relief that could be accorded to her and denied the motion to reopen. *Id.* at *2.

[7] *Channer*, 2019 WL 6726397, at *1.

[8] 11 U.S.C. § 350(6).

[9] *See* 28 U.S.C. § 158(d)(1).

court's decision.[10] We thus apply the same standard of review that the district court employed in its review of the bankruptcy court's order, reviewing "the bankruptcy court's findings of fact for clear error and its legal determinations de novo."[11] And "[a] bankruptcy judge's decision to grant or deny a motion to reopen . . . shall not be disturbed absent an abuse of discretion."[12]

Channer sought to reopen her case for the purpose of seeking the court to hold PHEAA in contempt for violating the discharge injunction, and she raised two grounds for reopening her case before the District Court.[13] We consider each argument in turn.

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[10] *In re Anderson*, 884 F.3d 382, 387 (2d Cir. 2018) ("[W]e engage in plenary, or de novo, review of the district court decision"); *see also In re Manville Forest Prod's Corp.*, 896 F.2d 1384, 1388 (2d Cir. 1990).

[11] *Anderson*, 884 F.3d at 387 (citing *In re U.S. Lines, Inc.*, 197 F.3d 631, 640-41 (2d Cir. 1999)); *see also id.* at 388 ("In sum, we engage in clear error review of the bankruptcy court's findings of fact and de novo review of its legal conclusions[.]"). In addition, we are "free to affirm an appealed decision on any ground which finds support in the record, regardless of the ground upon which the trial court relied." *McCall v. Pataki*, 232 F.3d 321, 323 (2d Cir. 2000) (internal quotation marks omitted).

[12] *In re Smith*, 645 F.3d 186, 189 (2d Cir. 2011). A court "has abused its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence or rendered a decision that cannot be located within the range of permissible decisions." *In re Sims*, 534 F.3d 117, 132 (2d Cir. 2008) (internal alterations, quotations marks, and citations omitted).

[13] Insofar as Channer raises other arguments on this appeal that she did not raise in bankruptcy proceedings, we decline to consider them here. *See In re Johns–Manville Corp.*, 759 F.3d 206,

Channer first argues that reopening was necessary on the basis that PHEAA is not a governmental unit and thus the loans it guarantees are dischargeable in bankruptcy. We disagree. "Student loans are presumptively nondischargeable in bankruptcy."[14] The discharge provision of the United States Bankruptcy Code discharges all debts "[e]xcept as provided in section 523.[15] Under Section 523(a)(8), student loans "made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution" are presumptively non-dischargeable in bankruptcy unless the debtor establishes "undue hardship."[16] In turn, a "governmental unit" is defined as, *inter cilia*, the "United States; [or a] State; Commonwealth; District; Territory; municipality; foreign state; department,

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219 (2d Cir. 2014) (failure to raise argument in the bankruptcy court waived the argument even if raised in the district court); *see, e.g.*, *Osborne v. Tulis*, 594 F. App'x 39, 41 (2d Cir. 2015) (non-published summary order) (citing *Johns Manville Corp.* and declining to consider arguments not raised before the bankruptcy court).

[14] *Easterling v. Collecto, Inc.*, 692 F.3d 229, 231 (2d Cir. 2012) (citing 11 U.S.C. § 523(a)(8)); *see also United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 277 & n. 13 (2010) ("Section 523(a)(8) renders student loan debt presumptively nondischargeable 'unless' a determination of undue hardship is made"); *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 450 (2004) (noting that "[s]ection 523(a)(8) is self-executing," such that "[u]nless the debtor affirmatively secures a hardship determination, the discharge order will not include a student loan debt").

[15] 11 U.S.C. § 727(6).

[16] *Id.* § 523(a)(8)(A)(i); *accord Easterling*, 692 F.3d at 231-32; *In re O'Brien*, 419 F.3d 104, 105 (2d Cir. 2005).

agency, or instrumentality of the United States . . . , a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government."[17]

We have explained that Section 523(a)(8) requires only that the loan in question was "made under any program funded in whole or in part by" a governmental unit.[18] The record here shows that Channer's loans were obtained through the FFEL Program, a federally-funded program under which the United States Department of Education ("DOE") serves as the reinsurer of student loans guaranteed by participating agencies.[19] The record further shows that PHEAA is the guarantor of Channer's loan. And PHEAA plainly qualifies as a governmental unit within the meaning of Section 523(a) because it is a government instrumentality of the Commonwealth of Pennsylvania. Indeed, PHEAA was created by statute as "a body corporate and politic constituting a public corporation and government instrumentality," and has been repeatedly recognized as such by the Pennsylvania

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[17] 11 U.S.C. § 101(27); *see also id.* § 101(40) ("The term 'municipality' means political subdivision or public agency or instrumentality of a State.").

[18] *O'Brien*, 419 F.3d at 106.

[19] *See, e.g.*, *Calise Beauty Sch., Inc. v. Kiley*, 941 F. Supp. 425, 427 (S.D.N.Y. 1996) (discussing the administration of the FFEL programs, pursuant to which "students attending eligible postsecondary schools may borrow money for tuition and expenses from participating lenders," which are "insured by participating 'guaranty agencies' which, in turn, are reinsured by the United States Department of Education").

courts.[20] On appeal Channer offers no persuasive justification as to why we should disregard these decisions rendered by Pennsylvania's highest court.[21] Accordingly, we conclude, as did the District Court, that the Bankruptcy Court did not abuse its discretion in rejecting Channer's argument that the PHEAA was

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[20] 24 Pa. Stat. 5 5101. *See Pennsylvania Higher Educ. Assistance Agency v. Xed*, 72 Pa. Cmwlth. 412, 412 (1983) ("PHEAA is a statutorily created instrumentality that guarantees educational loans made to persons pursuing higher education.") (citing Act of August 7, 1963, P.L. 549, *as amended*, 24 P.S. 55 5101 *et seq.*); *Greenfield v. Pennylvania Ins. Guar. Ass'n*, 24 Pa. Cmwlth. 127, 130-31 (1976) (reaffirming prior holding that PHEAA "was an agency of the Commonwealth" on the basis of certain indicia: that PHEAA was by statute "denominated a government instrumentality; that the members of the board of directors are appointed by the Governor, the President Pro Tempore of the Senate or Speaker of the House; that on dissolution its assets become the property of the State; and that at least part of its operating expenses is provided by a yearly appropriation by the General Assembly . . . "); *Richmond v. Pennsylvania Higher Ed Assistance Agency*, 6 Pa. Cmwlth. 612, 614, (1972) (holding that PHEAA is an agency of the Commonwealth government); *see also U.S. ex rel Oberg v. Pennsylvania Higher Educ. Assistance Agency*, 804 F.3d 646, 650 (4th Cir. 2015) (explaining that PHEAA was established by statute by the Commonwealth of Pennsylvania in 1963 "to improve access to higher education by originating, financing, and guaranteeing student loans." (internal quotation omitted)).

[21] Channer may have even conceded the point that PHEAA is a governmental unit on appeal. Indeed, Channer's own brief quotes a Fourth Circuit decision for the proposition that "[f]or purposes of federal law, PHEAA is a political subdivision, not an arm or alter ego of Pennsylvania." Channer Br. at 20 (quoting *U.S. ex rel. Oberg*, 804 F.3d at 676-77). As we have noted here, the definition of a governmental unit for the purposes of Section 523(a)(8) includes a "municipality," 11 U.S.C. § 101(27), which in turn is defined as a "political subdivision or public agency or instrumentality of a State," *id.* § 101(40).

not a governmental unit within the meaning of Section 523(a)(8) and in denying Channer's motion to reopen.[22]

Channer next argued that her student loan debt was discharged because she had listed it in her bankruptcy petition and PHEAA did not timely challenge its dischargeability. We again disagree. A debt is non-dischargeable if the "debt [is] of a kind specified in paragraph (2), (4) or (6) of subsection (a) of this section [523]"; if the "creditor to whom such debt is owed" commences an action; and "after notice and a hearing, the court determines such debt to be excepted from discharge."[23] But, as noted above, Channer's student loan – the debt at issue in this case – falls under paragraph (8) of Section 523(a). Since the debt in question here is plainly not of the kind set forth in paragraphs (2), (4) or (6) of Section 523(a), we conclude that the Bankruptcy Court did not abuse its discretion in denying Channer's motion to reopen after concluding that

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[22] Channer's student loan debt was presumptively non-dischargeable unless she established undue hardship *See Easterling* 692 F.3d at 232 ("To seek an undue hardship discharge of student loans, a debtor must 'commence an adversary proceeding by serving a summons and complaint on affected creditors.' " (quoting *U.S. Aid Funds, Inc.*, 559 U.S. at 269). But Channer did not institute such an adversarial proceeding. Nor did Channer claim undue hardship. *See Channer*, 2019 WL 856247, at *1 ("Notably, the Debtor has not claimed that the student loan debts impose an undue hardship on her.").

[23] 11 U.S.C. § 523(c)(1).

Channer's student loan debt was not discharged simply due to its inclusion in the bankruptcy petition.[24]

CONCLUSION

For the reasons set forth herein, we **AFFIRM** the December 12, 2019 judgment of the District Court.

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk

[SEAL]

/s/ Catherine O'Hagan Wolfe

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[24] *Channer*, 2019 WL 856247, at *1 ("Merely listing student loan debts on a petition does not discharge them, a fact noted on the Debtor's discharge order. The proper avenue for discharging student loan obligations is to commence an adversary proceeding under Fed. R. Bankr. P. 7001.") (internal citations omitted).

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE: LORNA Y. CHANNER, *Debtor*	BANKR NO. 10-21232 (JJT) *Chapter 7*
LORNA Y. CHANNER *Debtor-Appellant*, v. PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY *Appellee*.	CIVIL NO. 3:19-CV-00319 (KAD) DECEMBER 11, 2019

MEMORANDUM OF DECISION

Kari A. Dooley, United States District Judge

Appellant Lorna Channer (the "Appellant") appeals from the decision of the United States Bankruptcy Court for the District of Connecticut ("Bankruptcy Court") denying her motion to reopen her Chapter 7 bankruptcy case pursuant to 11 U.S.C. § 350(b).[1] For the reasons set forth below, the Court AFFIRMS the Bankruptcy Court's decision.

[1] Section 350(b) states: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause."

Background[2]

On April 16, 2010, the Appellant sought relief under Chapter 7 of the United States Bankruptcy Code (the "Bankruptcy Code"). On Schedule F of her bankruptcy petition, the Appellant listed as unsecured and non-priority her student loans, which were obtained through the Federal Family Education Loan Program and guaranteed by the Pennsylvania Higher Education Assistance Agency, d/b/a American Education Services ("PHEAA").[3] On November 3, 2010, the Bankruptcy Court issued an order of discharge. In that order, the Bankruptcy Court explained that there are "[s]ome . . . common types of debts which are not discharged in a chapter 7 bankruptcy case," which include "[d]ebts for most student loans." *In re Channer*, No. 10-21232 (JJT), ECF No. 64 at p. 2, ¶ d. (Bankr. D. Conn. Nov. 3, 2010). The bankruptcy case was administratively closed on August 29, 2013.

In or about 2017, PHEAA began garnishing the Appellant's wages. In response, the Appellant filed various motions with the Bankruptcy Court in which she contended that PHEAA should be held in contempt for attempting to collect a debt that had been discharged

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[2] Unless otherwise indicated, the following facts are undisputed.

[3] The Appellant now appears to dispute whether PHEAA guaranteed the student loans. But, as the Appellant acknowledges, she identified PHEAA as the creditor for her "educational student loan" in her Schedule F. Ch. 7 Pet. at 26, *In re Channer*, No. 10-21232 (JJT) (Bankr D Conn. filed Apr. 16, 2010), ECF No. 2; *see also* Mot. Reopen at ¶ 15, *In re Channer*, No. 10-21232 (JJT) (Bankr. D. Conn. filed Jan. 2, 2019), ECF No. 98.

by order of the court. As relevant to the instant appeal, on September 17, 2018, the Appellant filed a motion for order to show cause, which was denied on November 15, 2018 without prejudice to reconsideration if the bankruptcy case was reopened. On January 2, 2019, the Appellant filed a motion to reopen the bankruptcy case and for reconsideration of her motion for order to show cause. In that dual-motion, the Appellant argued, among other things, that her student loan debt had been discharged and that PHEAA was not a governmental entity entitled to protection from such discharge. On January 17, 2019, the Appellant filed an amended motion for order to show cause, in which she raised these same arguments. On January 31, 2019, PHEAA filed an objection to the Appellant's ending motions. PHEAA argued that the motions should be denied because the student loan debt was nondischargable under 11 U.S.C. § 523(a)(8) and the Appellant had failed to exhaust her administrative remedies with respect to the garnishment of her wages. PHEAA further asserted that because the debt was nondischargable, it followed that the Appellant could not establish by clear and convincing evidence that PHEAA acted in contempt of the court's discharge order.

On February 20, 2019, after a hearing, the Bankruptcy Court issued a decision denying the $ Appellant's motion to reopen. *In re Channer*, No. 10-21232 (JJT), 2019 WL 856247, at *1 (Bankr. D. Conn. Feb. 20, 2019). The Bankruptcy Court determined that the Appellant's student loan debt was not subject to discharge simply because it was listed on her Schedule F, as the

Appellant contended. *Id.* Rather, the proper avenue for seeking discharge of this debt was to commence an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure, which the Appellant had not done. *Id.* The Bankruptcy Court further rejected the Appellant's contention that PHEAA was not a governmental entity under Section 523(a)(8) because controlling Pennsylvania law made clear that PHEAA was a statutorily-created state agency. *Id.* Because the Appellant's reasons for reopening her bankruptcy case and seeking contempt sanctions rested on a faulty premise, the Bankruptcy Court found that there was no relief that could be accorded to her and denied the motion to reopen. *Id.* at *2. On March 4, 2019, the Appellant timely filed the instant appeal.

Standard of Review

Federal district courts have jurisdiction to hear appeals from final judgments, orders, and decrees of bankruptcy judges. 28 U.S.C. § 158(a). Courts "review the bankruptcy court's findings of fact for clear error and its legal determinations de novo." *In re Anderson*, 884 F.3d 382, 387 (2d Cir. 2018). "A bankruptcy judge's decision to grant or deny a motion to reopen pursuant to 11 U.S.C. § 350(b) shall not be disturbed absent an abuse of discretion." *In re Smith*, 645 F.3d 186, 189 (2d Cir. 2011). "The reason is that such decisions invoke the exercise of a bankruptcy court's equitable powers, which is dependent upon the facts and circumstances of each case." *In re Chalasani*, 92 F.3d 1300, 1307 (2d Cir. 1996). An abuse of discretion "occurs when (1) the

court's decision rests on an error of law (such as application of the wrong legal principle) or clearly erroneous factual finding, or (2) its decision—though not necessarily the product of a legal error or a clearly erroneous factual finding—cannot be located within the range of permissible decisions." *McDaniel v. Cty. of Schenectady*, 595 F.3d 411, 416 (2d Cir. 2010) (alterations omitted; citations omitted; internal quotation marks omitted) (quoting *Kickham Hanley P.C. v. Kodak Ret. Income Plan*, 558 F.3d 204, 209 (2d Cir. 2009)).

Discussion

On appeal, the Appellant contends that the Bankruptcy Court erred when it denied her motion to reopen because there are issues of fact concerning whether PHEAA qualifies as a governmental unit under Section 523(a)(8) and, therefore, whether her student loans were presumptively nondischargeable. PHEAA responds that the Bankruptcy Court properly concluded that the student loans had not been discharged and, therefore, there was no cause to reopen the bankruptcy case. Upon a review of the record, the Court concludes that the Bankruptcy Court acted well within its discretion when denying the Appellant's motion to reopen.

The discharge provision of the United States Bankruptcy Code discharges all debts "[e]xcept as provided in section 523." 11 U.S.C. § 727(b). Pursuant to Section 523(a)(8), student loans "made, insured, or guaranteed by a governmental unit, or made under

any program funded in whole or in part by a governmental unit or nonprofit institution" are presumptively nondischargeable in bankruptcy unless the debtor establishes "undue hardship." 11 U.S.C. § 523(a)(8)(A)(i); *accord Easterling v. Collecto, Inc.*, 692 F.3d 229, 231–32 (2d Cir. 2012). The Bankruptcy Code defines a "governmental unit," in relevant part, as a "department, agency, or instrumentality of . . . a Commonwealth. . . ." 11 U.S.C. § 101(27). Here, PHEAA plainly qualifies as a governmental unit. PHEAA is a statutorily-created "governmental instrumentality" tasked by the Commonwealth of Pennsylvania with improving higher educational opportunities, in part, by guaranteeing student loans.[4] 24 Pa. Stat. §§ 5101–5102; *Penn. Higher Educ. Assistance Agency v. Xed*, 456 A.2d 725, 725 (Pa. 1983) ("PHEAA is a statutorily created instrumentality that guarantees educational loans made to persons pursuing higher education.").

Citing to *United States ex rel. Oberg v. Pennsylvania Higher Education Assistance Agency*, 804 F.3d 646 (4th Cir. 2015) ("*Oberg*"), the Appellant argues that there are issues of fact concerning whether PHEAA can qualify as a government entity "because [PHEAA] is now a self-sufficient student loan financial-services company." (Appellant Reply Br. at 5, ECF No. 15.) And, therefore, the Bankruptcy Court erred by not

[4] The originating statute for the PHEAA refers to it as both an instrumentality and an agency. 24 Pa. Stat. § 5101. Whether PHEAA is better characterized as an agency or instrumentality of Pennsylvania is immaterial, as both entities qualify as governmental units under the Bankruptcy Code. 11 U.S.C. § 101(27).

permitting discovery into this issue. *Oberg* is inapposite. There, the Fourth Circuit Court of Appeals had to determine "whether PHEAA qualifies as an 'arm of the state' or 'alter ego' of Pennsylvania such that it cannot be sued under the [False Claims Act]."[5] *Oberg*, 804 F.3d at 650. To answer that question, the court considered, among other things, whether primary legal and financial liability for a judgment against PHEAA would fall on Pennsylvania. *Id.* at 650–51. Here, Pennsylvania's legal or financial liability vis-à-vis PHEAA is irrelevant. The sole issue is whether PHEAA falls within the definition of "governmental unit" for purposes of Section 523(a)(8), which it clearly does. *See* 11 U.S.C. § 101(27); 24 Pa. Stat. § 5101. No amount of discovery into PHEAA's financial independence or Pennsylvania's vicarious liability for PHEAA's conduct could change this conclusion.

Because PHEAA is a governmental unit, the Appellant's student loan debt was presumptively nondischargeable unless she established undue hardship. 11 U.S.C. § 523(a)(8)(A)(i). "To seek an undue hardship discharge of student loans, a debtor must 'commence an adversary proceeding by serving a summons and complaint on affected creditors.'" *Easterling*, 692 F.3d at 232 (quoting *U.S. Aid Funds, Inc. v. Espinosa,* 559 U.S. 260, 269 (2010)). It is undisputed that the

[5] The question of whether PHEAA could be sued under the FCA was the subject of three appeals before the Fourth Circuit. For the sake of simplicity, the Court refers only to the last appeal, which contains an extensive and thorough discussion of the holdings from the prior two appeals. The Court also address only those parts of *Oberg* relied upon by the Appellant.

Appellant has never instituted an adversarial proceeding in the bankruptcy court to have her student loans discharged for undue hardship. Therefore, the Appellant's student loans cannot have been, and were not, discharged.

The only purpose of granting the motion to reopen would have been to allow the Appellant to pursue her claim that PHEAA's efforts to collect on the student loan debt were in contempt of the Bankruptcy Court's order discharging that debt. Because the Appellant's student loans were never discharged, reopening her bankruptcy case to determine whether PHEAA should be held in contempt would have been a fruitless endeavor. As such, it was not an abuse of discretion for the Bankruptcy Court to deny the Appellant's motion to reopen.[6]

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[6] Through this appeal, the Appellant also seeks to litigate several claims and issues that are not germane to the Bankruptcy Court's decision denying the motion to reopen. For example, the Appellant seeks to litigate whether PHEAA engaged in predatory lending and debt collection practices. Although this accusation was made in passing in the motion to reopen and for reconsideration, the basis the Appellant provided for reopening her bankruptcy case was that PHEAA's efforts to collect on the student loans (predatory or not) violated the order of discharge. Consequently, the Bankruptcy Court's decision focused on the narrow issue of whether the student loan debt had been discharged. Because this Court's jurisdiction on appeal is limited to review of the "final judgments, orders, and decrees" of a bankruptcy judge; 28 U.S.C. § 158(a); the Court does not take up these collateral issues as they are not relevant to the Bankruptcy Court's denial of the motion to reopen.

Conclusion

For the reasons set forth in this decision, the decision of the Bankruptcy Court denying the Appellant's motion to reopen is hereby AFFIRMED. The Clerk of Court is directed to close this matter.

SO ORDERED at Bridgeport, Connecticut, this 11th day of December 2019.

/s/ Kari A. Dooley
KARI A. DOOLEY
UNITED STATES
DISTRICT JUDGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

IN RE:	:	**CHAPTER 7**
LORNA Y. CHANNER,	:	**CASE NO. 10-21232 (JJT)**
DEBTOR.	:	**RE: ECF NOS. 97, 107**

DECISION ON MOTION TO REOPEN

Before the Court is the Debtor's Motion to Reopen Case ("Motion," ECF No. 97), which she filed in order to pursue two other motions: (1) a motion for relief from judgment/order under Rule 9024 (ECF No. 98) and (2) an amended motion to show cause (ECF No. 103). Ultimately, the Debtor seeks for the Court to hold the Pennsylvania Higher Education Assistance Agency a/k/a American Education Services ("PHEAA") in contempt due to its efforts to collect what the Debtor claims are discharged debts. The PHEAA filed an objection to the Motion ("Objection," ECF No. 107). The Court held a hearing on the Motion and the Objection on February 7, 2019 (ECF Nos. 110 and 111). For the reasons below, the Objection is SUSTAINED and the Motion is DENIED.

"A bankruptcy court may reopen a case 'to administer assets, to accord relief to the debtor, or for other cause.' 11 U.S.C. § 350(b). 'Decisions by the bankruptcy court granting or denying a motion to reopen . . . are not disturbed, absent an abuse of discretion. The

reason is that such decisions invoke the exercise of a bankruptcy court's equitable powers, which is dependent upon the facts and circumstances of each case.' *State Bank of India v. Chalasani (In re Chalasani)*, 92 F.3d 1300, 1307 (2d Cir. 1996) (citation omitted). A bankruptcy court abuses its discretion when it arrives at a decision that (i) rests 'on an error of law (such as application of the wrong legal principle) or a clearly erroneous factual finding,' or (ii) 'cannot be located within the range of permissible decisions,' even if it is 'not necessarily the product of a legal error or a clearly erroneous factual finding.' *Schwartz v. Aquatic Dev. Group, Inc. (In re Aquatic Dev. Group, Inc.)*, 352 F.3d 671, 678 (2d Cir. 2003) (internal quotation marks omitted)." *Katz v. I.A. Alliance Corp. (In re I. Appel Corp.)*, 104 F. App'x 199, 200 (2d Cir. 2004) (summary order).

In the Motion, the Debtor claims that because she listed her student loans from the PHEAA on Schedule F of her Chapter 7 bankruptcy petition (ECF No. 2) as unsecured and non-priority, and the PHEAA did not challenge the loans' dischargeability, such loans were discharged. Additionally, the Debtor also claims that the PHEAA is not a government agency entitled to protection under 11 U.S.C. § 523(a)(8). Notably, the Debtor has not claimed that the student loan debts impose an undue hardship on her.

The Debtor's claims are meritless. First, Schedule F is the appropriate place to list student loan obligations because they are usually unsecured, non-priority debts. Merely listing student loan debts on a petition does not discharge them, a fact noted on the Debtor's

discharge order (ECF No. 64). *See Newman v. Educ. Credit Mgmt. Corp.*, 2009 WL 1875778, at *3-4 (E.D.N.Y. June 26, 2009). The proper avenue for discharging student loan obligations is to commence an adversary proceeding under Fed. R. Bankr. P. 7001. The Debtor has not done so.

Likewise, the Debtor's assertion that the PHEAA is not a governmental agency is erroneous. Section 523(a)(8)(A)(i) of the Bankruptcy Code exempts student loans from discharge that, among other things, are "made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit[.]" Under 11 U.S.C. § 101(27), "[t]he term "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government." The PHEAA was established by Pennsylvania statute, 24 Pa. Cons. Stat. § 5101, and has long been recognized by Pennsylvania state courts as a state agency. *See, e.g.*, *Richmond v. Pa. Higher Educ. Assistance Agency*, 297 A.2d 544, 546 (Pa. Commw. Ct. 1972); *see also generally Cherry v. Pa. Higher Educ. Assistance Agency*, 642 A.2d 463 (Pa. 1994) (treating the PHEAA as a state agency). This Court has no power to alter Pennsylvania's definition of what constitutes a Pennsylvania state agency. As such, the PHEAA fits within the definition of

"governmental unit" as specified by the Bankruptcy Code and, therefore, would be entitled to the protections of 11 U.S.C. § 523(a)(8).

Having considered the Debtor's reasons for wanting to reopen her bankruptcy case, the Court finds that there is no relief that it can accord her and, otherwise, no cause to reopen the case. The Objection is SUSTAINED and the Motion is DENIED.

IT IS SO ORDERED at Hartford, Connecticut this 20th day of February 2019.

James J. Tancredi
United States
Bankruptcy Judge
District of Connecticut

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

IN RE:	Case No. 10-21232
LORNA Y. CHANNER,	Chapter 7
Debtor.	Abraham Ribicoff Building 450 Main Street, 7th Floor Hartford, Connecticut 06103
	February 7, 2019 12:31 p.m.

TRANSCRIPT OF MOTION TO REOPEN CASE FILED BY DEBTOR (97); OBJECTION TO DEBTOR'S MOTION TO REOPEN AND TO RECONSIDER DECISION TO DENY DEBTOR'S MOTION FOR ORDER TO SHOW CAUSE AND AMENDED MOTION TO SHOW CAUSE FILED BY ELIZABETH J. AUSTIN ON BEHALF OF PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY (107); MOTION FOR RELIEF FOR JUDGMENT/ORDER UNDER RULE 9024 FILED BY DEBTOR (98); AMENDED MOTION FOR ORDER TO SHOW CAUSE AS TO WHY PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY AND AMERICAN EDUCATION SERVICES SHOULD NOT BE HELD IN CONTEMPT FILED BY DEBTOR (103); AFFIDAVIT TO OBJECTION 107 FILED BY ELIZABETH J. AUSTIN ON BEHALF OF PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY (108)

BEFORE HONORABLE JAMES J. TANCREDI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor:	LORAN Y. CHANNER, Pro Se
For Pennsylvania Higher Education Assistance Agency:	Pullman and Comley By: ELIZABETH J. AUSTIN, ESQ. 850 Main Street P.O. Box 7006 Bridgeport, Connecticut 06601-7006

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

[2] COURTROOM DEPUTY: The next matter is 10-21232, Lorna Channer.

MS. CHANNER: Good afternoon, Your Honor. Lorna Channer for the record.

THE COURT: Okay.

MS. AUSTIN: Good afternoon, Your Honor. Elizabeth Austin, Pullman and Comley –

THE COURT: All right.

MS. AUSTIN: – for Pennsylvania Higher Ed.

THE COURT: All right.

We have various matters on the calendar, including a motion to reopen the underlying case and an objection thereto, ECF 97 and 107;

A motion for relief from judgment, ECF 98;

And an amended motion for order to show cause trying to hold American Education Services in contempt of Court, ECF number 103; and an objection and affidavit that have been filed in response thereto, ECF 107 and 108.

While I may proceed to follow these motions, we have a threshold issue about whether or not the case is even reopened, so I'd like to start there.

Ms. Channer, the burden is on you to explain to me why I should reopen this case.

MS. CHANNER: Someone trying to collect debt that has been functional discharge by law.

[3] THE COURT: And how has the debt been discharged by law?

MS. CHANNER: Initially when it was discharged filed in the category that was appropriate, they given time – time and money by the Court to make their decision, and there was nothing filed at that time to oppose.

THE COURT: So you – so you claim the way that you listed this particular student loan and the fact that they didn't respond to that caused the student loan to get discharged?

MS. CHANNER: Operation of law, Your Honor, I'm sorry.

THE COURT: Okay.

MS. CHANNER: Operation of law.

THE COURT: And if they are – assuming for moment they are a qualified educational institution that requires you to bring a hardship proceeding, assuming for the moment that they are, do you still contend that the effect of the discharge was to discharged this debt without a court proceeding where I, or some other judge, assessed whether or not there was undue hardship?

MS. CHANNER: It was discharged by operation of law after the deadline has been timely past and they did not respond.

THE COURT: Well, that's – that's not response to my [4] question.

Assuming they are an appropriate educational institution that gave you a student loan, and you didn't bring a – what's called a Brunner proceeding to show that you had undue hardship, is it your contention that the discharge discharged this loan?

MS. CHANNER: Your Honor, that's a – that's a question which is complicated to answer, that's why I have my response in writing, to at least get a chance to present it to the record.

THE COURT: All right. Do you want to summarize your response to me?

MS. CHANNER: Thank you, Your Honor, for giving me the privilege.

Judicial notices and authorities. Petitioner gives the following judicial notices and authorities. Petitioner is not trained in law and should be held –

THE COURT: I'm going to stop you. If what you're doing is reading what you've already filed, I've read it.

I want you to summarize your position, if you can. Can you summarize your position, or you just want me to rely on your papers?

MS. CHANNER: If you would allow me 15 to 20 minutes, you know, being a woman, and I'm not a lawyer, and I'm not trained, and I'm not versed in, you know, laws, I would [5] appreciate that, Your Honor.

THE COURT: I may, but I want to ask you some threshold questions. Are you contending that Ms. Austin's client is not a qualified educational institution whose loans – student loans are normally not discharged? Are you contending that?

MS. CHANNER: I object.

THE COURT: I – you object to what? It's a question.

MS. CHANNER: What you has presented to me.

THE COURT: Okay. You can object, but you have to answer my question. Are you contending that they are not within the protections of the Bankruptcy Code where normally their loans are not dischargeable

unless you have brought a proceeding to show undue hardship?

MS. CHANNER: I prefer to read what I have, Your Honor, because I am not clear on the question you're asking to respond.

THE COURT: Do you know there's a statute in Pennsylvania that says that Ms. Austin's client is a body corporate and politic constituting a public corporation and governmental instrumentality by the State of Pennsylvania, do you know there's a statute that says that in Pennsylvania?

MS. CHANNER: And, Your Honor, if you give me the opportunity, the Constitutional Right that I deserve, I would [6] present to you what I have in writing.

THE COURT: Okay. I've read what you have in writing. I'm asking you whether or not you are familiar with the fact that there is a state law statute that says that they are a governmental entity.

MS. CHANNER: They did not respond appropriately and timely, so the operation of law discharged.

THE COURT: Okay. So your answer is nonresponsive. Are you familiar with the fact that there are decisions out of Pennsylvania courts, including high courts in Pennsylvania that –

MS. CHANNER: Your Honor –

THE COURT: Excuse me. – that recognize that they are governmental units of the Commonwealth of Pennsylvania.

MS. CHANNER: Sorry to interrupt while you were speaking, Your Honor.

Your Honor, if you gave me the opportunity and the Constitutional Rights I'm allowed, I will present my case. I am not a lawyer, I am not versed in the law. I'm a woman, and a woman of color.

Why can't I give ten, 15 minutes to present to you, Your Honor, I'm asking timely what I have on paper. It's because I'm a woman, I'm a woman – I'm a black woman –

THE COURT: It has nothing to do with it, ma'am. You've had –

[7] MS. CHANNER: Will you give me –

THE COURT: Excuse me.

MS. CHANNER: – some time so I could get it in the record, Your Honor? That's all I'm asking.

THE COURT: Okay. So you don't feel like you can answer my question at this point?

MS. CHANNER: I'd love to present what I have on paper, Your Honor.

THE COURT: Again, I've read what you have on paper.

And the record will note that your responses are nonresponsive.

What do you –

MS. CHANNER: Your Honor –

THE COURT: What do you contend is discharged by virtue of your discharge proceeding? How much in student loans?

MS. CHANNER: Your Honor, I'm asking you kindly, give me an opportunity to read what I have presented to Your Honor.

THE COURT: Okay. And I said I will consider that, but I want to ask my questions first, okay? I have a prerogative to do that, and I'm going to ask my questions. If you want to say "I can't answer it right now," you could say, "I can't answer it right now."

How much do you contend –

MS. CHANNER: I cannot answer it right now, Your [8] Honor. I'd have to research and gave back to you in a timely manner.

THE COURT: A timely manner –

MS. CHANNER: Knowing –

THE COURT: – is going to be today, okay? And I may give you, in a moment, some time to put your thoughts together.

But I'm trying to –

MS. CHANNER: I think I –

THE COURT: I'm trying to understand the nature of papers that you have filed with this Court.

MS. CHANNER: I am allowed my Constitutional Right.

THE COURT: Yup.

MS. CHANNER: I am allowed my Constitutional Right, and like I said, I'm being repetitive, I'm a woman, I'm not versed in the law, I am not a lawyer, I'm a black woman, it's what – what's portraying here.

I have seen representative in this court out here this morning sit and listen attentively, trying to learn and understand what's going on because I respect you even giving me the time to – just to listen to me. And they have gotten time, I sit there timing, and I'm counting, and 15, 20 minutes, they have given to present their case. That's all I'm asking Your Honor, so I could present it so it could be on the record for the file. That's all I'm asking.

[9] THE COURT: Okay. And I said I will consider that.

But I want to ask my questions first.

MS. CHANNER: I just respond to you, Your Honor.

THE COURT: Um-hum.

MS. CHANNER: Not at this time. I will research it, and get it back to you because it's need – it needs careful –

THE COURT: We're addressing it today.

All right. Why don't you wait a moment, I'm going to hear from –

MS. CHANNER: I object.

THE COURT: Okay. Why don't you wait a moment, I will hear from Ms. Austin.

MS. AUSTIN: Thank you, Your Honor.

Very simply put, as Your Honor has noted, my client is a statutory – statutory-created instrumentality of the Commonwealth of Pennsylvania. And it was created, in part, to guarantee federally insured loans, and that's what they did in this instance.

The – the loan is nondischargeable pursuant to 523(a)(8). The only way it would be nondischargeable is if the debtor brought an action –

THE COURT: A Brunner proceeding.

MS. AUSTIN: A Brunner proceeding, and met the standards of Brunner to show undue hardship.

No such action was taken in the bankruptcy [10] proceeding, nor has the debtor contended that they could meet – that she could meet this very, very high standard set by the Brunner of undue hardship.

So there could – because the debt was not discharged, any actions that were taken to collect on the debt – and no actions were taken during the pendency of the bankruptcy proceeding – collection actions only ensued once the case was closed.

So as a result, those actions cannot constitute contempt of court.

And if the only reason here to have this case be reopened is to pursue a proceeding of contempt against my client, then there is no basis to reopen the case, nor can the debtor meet the high standard necessary to show that a contempt order should enter. Because, once again, the argument is it's fatally flawed, there has been no violation of the discharge order because the debt has not been discharged.

And I will also note, Your Honor, as I noted in my pleadings, the debtor has not exhausted administrative – her administrative proceedings – her right to administrative proceedings.

When the notice of garnishment was sent to the debtor, she had an opportunity to request a hearing if she felt there was a basis as to why her wages should not be garnished, or why the debt should not be collected. She did not ask for a [11] hearing.

That right to a hearing continues to exist even after the garnishment proceedings have commenced. So for that reason, this matter should be dismissed because I think there's a jurisdictional issue because she has failed to exhaust her administrative remedies.

With that said, I understand that if she does request a hearing, I don't know that she's going to get any further with the issue of her argument that the debt is dischargeable because it simply is not.

THE COURT: All right. Putting what I understand her arguments to be that I have discerned from her papers, and your arguments together, I hear three issues:

The first issue is whether or not you're the appropriate governmental entity that's entitled to the protections under the Brunner test.

And as I noted, and you have underscored, there is a State statute that says you're a governmental entity, and there are Pennsylvania high court decisions that say you are such a governmental entity.

The debtor also appears to attribute some significance to the fact that she listed your student loans on her bankruptcy petition, and you didn't do anything about that.

My understanding of the Brunner test and the [12] jurisprudence in this Circuit is the onus is on her to do something about her student loans. There's not an onus on you to bring any proceeding to determine that they are not discharged.

MS. AUSTIN: That – yeah –

THE COURT: Do you agree with that?

MS. AUSTIN: I absolutely agree with that being the case, the case law is very clear on that issue.

A student debt is often listen listed on schedules as being unsecured, and it is, indeed, an unsecured debt, but it is a nondischargeable debt, and that is the very –

THE COURT: Otherwise everybody would list their student debt on their schedules and hope that their student loan lender would do nothing.

MS. AUSTIN: And that is exactly why the legislature wrote it – made undue – they used the word "undue" to make it such a high standard for these debts to be discharged.

THE COURT: Okay. And then lastly, you've made an argument about exhaustion and how it reflects on the jurisdiction or possibly the ripeness of any dispute.

Do I have all the issues encompassed, Ms. Austin?

MS. AUSTIN: Yes, Your Honor, I believe you do.

THE COURT: Okay. All right, Ms. Channer, I've tried –

MS. CHANNER: Yes, Your Honor.

[13] THE COURT: I've tried by both my questions and my summaries, and the questions I've asked both of you and Ms. Austin to lay out the considerations here. The considerations are legal ones. You have a formidable obstacle in terms of convincing me because I have in my hand a Pennsylvania statute, and at least three or four decisions out of Pennsylvania

courts that say her client is an appropriate governmental entity.

So you have a significant obstacle convincing me otherwise. I am bound as a Federal Judge to recognize Pennsylvania law, no matter what I think.

Pennsylvania law tells me that they are a governmental institution.

With re –

MS. CHANNER: Your –

THE COURT: With regard to the second issue that both Attorney Austin and I have delineated in connection with the bankruptcy proceeding, the mere fact that you list student loans on your petition doesn't give you a discharge if they do nothing.

If you want a discharge from student loans, under the law in the United States and in the Second Circuit where we sit, you have to bring a proceeding to either challenge whether or not they're an appropriate governmental institution, or to demonstrate undue hardship. And it's clear from a review of the record that you didn't do that.

[14] And then lastly, Ms. Austin has made an argument that you may have some burdens in terms of trying to exhaust other remedies to get relief from your student loans before you come here.

So those are the three things that I'm considering. And consistent –

MS. CHANNER: Objection, Your Honor.

THE COURT: Okay, and I note your objection.

But those are the things that I'm considering, and those are –

MS. CHANNER: Objection, Your Honor.

THE COURT: And those are the issues that –

MS. CHANNER: Objection.

THE COURT: Those are the issues that your papers –

MS. CHANNER: Objection, Your Honor.

THE COURT: Okay, I heard you. You don't need to repeat it again.

MS. CHANNER: Could you allow me my Constitutional Rights –

THE COURT: You're going to get it.

MS. CHANNER: – Your Honor, to have something in the record?

THE COURT: You're going to get it in a second.

MS. CHANNER: Thank you very much, Your Honor. I appreciate it.

[15] THE COURT: When I finish.

MS. CHANNER: Yes, Your Honor.

THE COURT: Those are the three issues that your papers and Ms. Austin's papers present. And I'm going to give –

MS. CHANNER: Object.

THE COURT: And I'm going to give you a chance to read your documents again –

MS. CHANNER: Appreciate it, Your Honor.

THE COURT: And – and to come back here today and – and to present –

MS. CHANNER: Objection.

THE COURT: – and to present any other argument.

MS. CHANNER: Objection, Your Honor.

THE COURT: Okay.

MS. CHANNER: May I proceed –

THE COURT: You don't need to continue to object. I know that you object to what I have advanced. But my job –

MS. CHANNER: Okay, Your Honor.

THE COURT: My job, consistent with the rules, is to address the motions that have been filed in a timely and efficient fashion you have had –

MS. CHANNER: Objection, Your Honor. I am not trained in the law.

THE COURT: I understand you're not trained in the [16] law.

MS. CHANNER: And I have – and I should not be held with less than stringent standards that is formal pleading. And I have case law that proves that, C. Haines versus Kerner. And today I would like to present my challenge. My presentation today will speak to the priority and the statutes of the alleged debt, and will show that the order to garnish was obtained under false pretense and fraud.

I am challenging the counsel of PHEAA, Pennsylvania Higher Education Assistance Program and American Education Services, Windham Professionals has not announced who has – has counsel, please respond for the record.

Also there is a trust involved –

THE COURT: Hold on, Ms. Channer. You're going to get your request. Do you want time to think? You're going to come back here at 1:45, I'm going to give you approximately 15 minutes to make your arguments on the motion to reopen.

You have to reopen your bankruptcy case in order to get the other relief. And if you do not convince me as a threshold matter that there's good cause to do so, we will never get to the other relief.

MS. CHANNER: Objection, Your Honor. It was – that's why I was given a date for today. It was – I was notified by the Court –

THE COURT: You have your date –

[17] MS. CHANNER: – and I have a hearing today.

THE COURT: You have your date today.

MS. CHANNER: That means it was reopened.

THE COURT: No, it doesn't mean it's reopened. I'm sorry, you misunderstand a lot.

The motion to reopen is on the calendar, and you're here to argue it. So you're directed to come back at 1:45 prepared to argue, okay?

I'm going to take a recess. I'll be back at 1:45.

(Recess 12:52 p.m./Reconvene 1:52 p.m.)

THE COURT: The Channer matter.

COURTROOM DEPUTY: All right. We're back on the record for 10-21232, Lorna Channer.

THE COURT: All right. Ms. Channer, you asked the Court for time to put your thoughts together. I have endeavored to articulate for you the issues that the Court has to consider given the law and the papers that have been filed.

This is your opportunity to address the Court.

MS. CHANNER: Thank you, Your Honor.

Today's challenge is my presentation today will speak to the priority and status of the alleged debt, and will show that the order to garnish was obtained under false pretense and fraud.

I am challenging the counsel of PHEAA and AES, Windham Professionals has not announced who it has as a [18] counsel. Please respond for the Court record.

Also, there is a trust involved named USELT Trust IV. These four parties each have separate interest in the outcome of these proceedings. They each may conflict – may have conflicts of interest; I'm sorry. The forensic audit of the loan will reveal this through an evidentiary hearing allowing discovery, this is a formal request.

Also all parties involved should know who this law firm is representing. My student loan is table funded, which is against public policy, and any parties involved in such loans according to Regulation Z have unclean hands, violating the TILA.

According to Regulation Z, these parties with unclean hands should not be afforded equitable relief found in judicial presumption, but must be required to prove all of their claims.

I am requesting the original note so that I can have a forensic evaluation conducted. This request should be honored by the Judge and considered discovery for my case.

I received a copy of the note, but there was no proof of authenticity. I challenge the parties' ability to show the alleged debt as the priority and status of a bone fide educational benefit described in Section 11 U.S.C. Section 523(a)(8).

Without this proper status, debt cannot meet requirements or be excepted as a discharge of a loan under the [19] statute.

This debt is nonpriority and unsecured and that would make it dischargeable under Bankruptcy Code. Nonpriority, no evidence that the Department of Education and Finance are guarantee debt, so I dealt with alleged debt by filing in my Chapter 7 petition.

The debt was discharged by operation of law, and the party has not mentioned this because they defaulted final challenge in the alleged debt according to the guidelines and timeliness in my Chapter 7 petition.

The parties have not alleged that they did not receive notice of my petition, including guidelines, timeliness, and the rebuttal process for the claim. Debt was discharged by operation of law according to bankruptcy law if priority and status of alleged debt was unfounded and obtained under false pretense and fraudulent.

This information, as well as so much more, will be exposed if granted evidentiary hearing allowing discovery. This is a formal request.

Parties have no admissible evidence that shows ownership interest in the alleged debt. I contend that

the alleged debt is not a student loan that is expected (sic) from discharge under Section 523(a)(8) of the Code because it is not considered an educational benefit. A scholarship is a benefit, and Congress was referencing scholarship when it wrote the [20] phrase in 1990.

Respondent knew, or should have known, that debt that they sought to collect was not an educational benefit as prescribed by the Code. As such, it was not exempt from discharge in bankruptcy proceedings.

An evidentiary hearing will reveal the truth of this alleged debt. This is a formal request.

Most Bankruptcy Courts have fallen victim to the educational benefits siren and have refused to discharge any debt that can be constituted as providing broadly defined educational advantages. This interpretation is at odds with the statutory language under legislative history, I'm sorry, of the second – of the Section 523(a)(8), which protects three distinct classes of debt:

First, Subsection (a)(i) only protects federally insured or non-profit student loans;

Second, Subsection (a)(ii) only protects debts resulting from noncompliance in contractual service scholarships and grants;

Third, Subsection (b) only protects private student loans that meet narrow IRS Code qualification. A sizeable portion of private student loan debt falls outside all three of these categories, and must be treated as

non-qualified private student loans that have no protection from discharge.

Courts have misapplied Section 523(a)(8), and used it [21] to refuse discharge of any educational advantages, that is educational benefit, recent courts have begun applying the laws as written case law, Campbell versus Citibank, 547.

The statute does not contend that the term loan should replace the term benefit and it is this misinterpretation that the courts have been improperly assessing student loans to mean student benefits. Because of this exception for the nondischargeable rule that the alleged debt was placed in nonpriority unsecured debt, Schedule F of my bankruptcy petition, my contempt claims include Bankruptcy Code violation, Fair Debt Collection Practices Acts violation, Truth In Lending violation, Debt Collection Practices Act violations, fraud, fraud, fraud, failure to disclose true lender, the collection actions conducted against me were to harm me, my reputation, my credit, my career, and those who know me, as well as stranger, know – now in my life.

In addition to my cease and desist demand, the parties also had knowledge of this bankruptcy discharge orders, this made the contempt clear and convince the pretender lender, PHEAA/AES to refund a couple of thousand – a couple of thousand dollars.

A schedule evidentiary hearing would reveal the many violations within this transaction, and I am formally requesting this today.

Therefore, I move the Court for a continuance until [22] such hearing can be scheduled.

Humbly submitted, Lorna Channer.

THE COURT: Thank you.

MS. CHANNER: You're welcome, Your Honor.

THE COURT: Ms. Austin, anything further?

MS. AUSTIN: No, Your Honor, other than, of course, we would oppose a continuance. The – that the cost and expenses of having to defend against this are burdensome to my client, and it's unfair that they would have to continue to litigate over this matter when it is as clear cut as it is that this is a nondischargeable debt, and there has been no violation of the discharge order.

THE COURT: All right. I'm going to take these matters under advisement.

I may, if I open the case, have further proceedings on a motion for relief from judgment and the amended motion for order to show cause.

But I'm going to focus principally on ECF 97 about whether or not these cases get reopened.

All right, thank you, both.

MS. AUSTIN: Thank you, Your Honor.

MS. CHANNER: You're welcome, Your Honor.

(Whereupon, at 2:02 p.m., the hearing was adjourned.)

[Certificate Of Transcriber Omitted]

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re: Lorna Y. Channer, Debtor.	CHAPTER 7 No. 10-21232
Lorna Y. Channer Movant v. PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY, And, AMERICAN EDUCATION SERVICES, Respondents	Re: ECF No. 84

MOTION FOR ORDER TO SHOW CAUSE

(Filed Sep. 17, 2018)

Lorna Channer (hereinafter, "Movant") moves this Honorable Court to order Pennsylvania Higher Education Assistance Agency (hereinafter, "PHEAA") and American Education Services (hereinafter, "AES"), along with each of the parties and entities that assisted and abetted them, to show cause as to why they should not be held in contempt of this Court's Discharge Decree, and of their violations of the injunctions

of the Bankruptcy Code ("the Code"). In support of her motion, Movant says the following:

Judicial Notices and Authorities

Movant gives the following Judicial Notices and Authorities:

- Movant is not trained in the law and should be held to less stringent standards than formal pleadings drafted by lawyers. See *Haines v. Kerner*, 404 U.S. 519 (1972), which states "Allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient" . . . "which we hold to less stringent standards than formal pleadings drafted by lawyers."; and,
- Federal statutes are the supreme law of the land and will be judicially noticed. Federal regulations and executive orders published in the Federal Register must be judicially noticed. Please see, and as reported under 44 U.S.C. § 1507, as well as 27 CFR 72.11; and,
- Reservation of Rights. Petitioner reserves all her rights under UCC 1-308, and under the constitutions of the state of Connecticut and the United States of America; and,
- Movant further requests the Court take judicial notice as purported under CGS Sec. 52-164, which provides for judicial decisions of other states and countries.

For Orders To Show Cause

1. PHEAA and AES have made efforts to collect a discharged debt from Movant.

2. After receiving notice from Movant that they were in contempt of court with their actions to collect a discharged debt, said parties persisted in their collection actions by garnishing employment funds from Petitioner's employer.

3. Neither PHEAA nor AES is a government agency, and neither is entitled to utilize the bankruptcy laws pertaining to education loans owed to government agencies while acting as collection agents for investors.

4. PHEAA purports to be a collection agent for AES, and AES purports to be a "guarantor" of a student loan account for Movant.

5. Both PHEAA and AES have improperly held themselves out to be government entities that are entitled to get around the discharge injunctions of the Bankruptcy Code.

6. PHEAA has a business address at 1200 North Seventh Street, Harrisburg, Pennsylvania 17105.

7. AES has a business address at 1200 North Seventh Street, Harrisburg, Pennsylvania 17102.

8. Claims of PHEAA and AES were included in Movant's bankruptcy petition as being "unsecured" and "non-priority". Neither party timely disputed the Petition's claim within

this court's ordered deadline to challenge dischargeability.

9. The purported debts of PHEAA and AES were discharged in § 727 of the Bankruptcy Code, and no timely appeal was filed by the parties after said discharge was ordered..

10. PHEAA and AES are currently in contempt of the bankruptcy court's orders, which orders discharged their purported debts.

11. Neither PHEAA or AES has claimed that it has owned the subject debts at any point in time. The purported debts had no security interest with Movant, and said claims were therefore listed as unsecured in Movant's bankruptcy petition. When this Court ordered the discharge of Movant's debts, the Respondents' purported debts were discharged by said order. Therefore, the claims of said parties did not survive the bankruptcy process.

12. PHEAA and AES have misrepresented their status as debt collectors, and their status as debt owners. Their purported transactions were table-funded, and were predatory loans, per se; according to Regulation Z.

13. PHEAA and AES began their collection actions against Movant after Movant received her discharge orders from the Bankruptcy Court. Said collection actions were therefore in violation of the discharge injunctions of the Code.

14. Movant sent PHEAA and AES a cease and desist notice which explained their claims

were considered to be discharged, and which declared that they had not timely filed an adversary proceeding to challenge the dischargeability of their purported debt within the court-ordered deadline. Yet the parties persisted in their collection efforts.

15. By their participation in said predatory loans, the parties acted in violation of public policy and are therefore not eligible for any form of equitable relief from this Court. This is due to the parties' unclean hands.

16. Movant included PHEAA's and AES's purported debts in Schedule "F" of her bankruptcy petition. ECF 2. This provided notice to the parties that their purported debt was being declared as "unsecured" and "non-priority".

17. The Bankruptcy Trustee issued a notice to all listed creditors that there would be a § 341 Creditors' Meeting. Said notice also served as notification to each creditor that there was a court-ordered deadline to file any objection they may have to the discharge of their respective debts. The deadline for objecting was October 31, 2010.

18. The court-ordered deadline was ignored by PHEAA and AES as they did not timely contest the dischargeability of their purported debt within that deadline. The parties were thereafter barred from any effort to collect their purported debt. The discharge had become effective by operation of law.

19. The Bankruptcy Court issued its § 727 Discharge Of Debtor in accordance with Title 11 of the United States Bankruptcy Code, on November 3, 2017. (See ECF 64.)

20. Notice of the Order Discharging Debtor's personal liability to pay the purported debt was mailed to all listed creditors by the Clerk of the Bankruptcy Court on November 3, 2010.

21. PHEAA and AES did not file timely appeals from the Bankruptcy Court's discharge order, so said order became final.

22. The Bankruptcy Case was thereafter closed.

23. PHEAA and AES knew, or should have known, that their collection actions which followed the bankruptcy discharge were barred by the Bankruptcy Court's decree and by the discharge injunctions of the Code. Yet the parties ignored the decree and the Code when they secured a garnishment order against Movant's payroll earnings and proceeded to garnish her pay. Such action was in contempt of the Bankruptcy Code.

24. After Movant filed her motion to open and for an order to show cause, the parties arbitrarily returned some of the garnished wages it had taken from her. After returning approximately $2,455.99 of the garnished wages to Movant, PHEAA sent Movant a letter that announced its notice of intent to resume its collection activity. (Correspondence to Movant is **Exhibit A**.)

25. Movant considers said notice of intent to be a continuing violation of the Code, and a continuing contempt of this Court's orders.

26. The alleged loan was from a purported private lender of a for-profit school which makes it an unqualified, non-priority loan which is dischargeable in Chapter 7 bankruptcy proceedings. Further, such loan does not comport with the requirements of the "educational benefit" section of the Code.

27. Movant contends PHEAA and AES should also be sanctioned for making false representations to the Superior Court where they secured their garnishment order.

In view of the foregoing, Petitioner prays this Honorable Court will dismiss any claims of PHEAA and AES with prejudice, and award costs, punitive damages and sanctions against the parties and their counsel. Petitioner also requests such other and further relief as is just and fair.

Respectfully submitted,

September 15, 2018

Petitioner,

By: /s/ Lorna Channer

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[Certification Omitted]