

1989

Wyllis Dorman-Ligh v. State of Utah, Utah Higher Education Assistance Authority : Brief of Appellant

Utah Court of Appeals

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BRIEF

890482-CA

IN THE UTAH COURT OF APPEALS OF THE STATE OF UTAH

WYLLIS DORMAN-LIGH,

Defendant/Appellant.

-v-

COURT OF APPEALS NO 890482-CA
TRIAL COURT NO 86-89411-CV

STATE OF UTAH, UTAH HIGHER
EDUCATION ASSISTANCE AUTHORITY,

Plaintiff/Respondent

BRIEF OF THE APPELLANT

Appeal from a Judgment of the Third Circuit Court, State of Utah,
Salt Lake County, Salt Lake Department, Honorable Dennis M. Fuchs

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ARGUMENT PRIORITY CLASSIFICATION 14b

FILE

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COURT OF

IN THE UTAH COURT OF APPEALS OF THE STATE OF UTAH

WYLLIS DORMAN-LIGH, :
 :
 Defendant/Appellant, :
 : COURT OF APPEALS NO. 890482-CA
 -v- : TRIAL COURT NO. 86-89411-CV
 :
 STATE OF UTAH, UTAH HIGHER :
 EDUCATION ASSISTANCE AUTHORITY, :
 :
 Plaintiff/Respondent.

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Salt Lake County, Salt Lake Department, Honorable Dennis M. Fuchs

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ARGUMENT PRIORITY CLASSIFICATION: 14b

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JURISDICTIONAL AUTHORITY

The Utah Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Ann Sec 78-2a-3

NATURE OF THE PROCEEDINGS

This appeal is from a final judgment order of the Third Circuit Court on the 12th day of June, 1989 and entered on the 29th day of August, 1989 against Wyllis Dorman-Ligh, Defendant/Appellant, hereafter known as appellant or borrower Utah Higher Education Assistance Authority, Plaintiff/Respondent, hereafter known as respondent or UHEAA, claims this is a simple breach of contract case involving default in payment of student loans Borrower acknowledges signing two promissory notes with a total loan value of \$7,500 00. denies the loan is in default and, therefore, disputes owing any monies above the loan principal Further, UHEAA, administrative agency of higher education, did not follow Utah statutes promulgated under collection of student loans Borrower says that there were genuine issues of disputed fact and UHEAA should not have been awarded summary judgment

ISSUES ON APPEAL

1 Did the Court err in finding the appellant in default of her student loan, with prejudice, by basing its judgment solely on borrower's assertion that she signed two promissory notes with a face value of \$7,500 00?

2 Did the Court err, with prejudice, in awarding interest and attorney's fees to UHEAA when borrower asserted in all written responses that she was not in default of her student loan and, therefore, did not owe any monies above the face value of the promissory notes?

3 Did the Court err in not articulating with sufficient detail the basis of the ultimate conclusion that borrower was in default of principal, and, therefore,

responsible for interest and attorney's fee? See Smith v. Smith, 726 P 2d 423, 426 (Utah 1986)

4 Did the Court err in failing to enter adequate findings of fact on material issues pursuant to 11 United State Congress Sec 523 (a)(8) (Supplement IV 1980) Also see Action v. J.B. Deliran Corp. 737 P 2d 996, 999 (Utah 1987) and Atlas Corp. v. Clovis National Bank, 737 P 2d 225, 229 (Utah 1987)

5 Was appellant, acting pro se, denied her rights of reasonable opportunity to present her position and to conduct a cross examination pursuant to Utah Code Ann Sec 63-46b-8(1)(a)(d) (Suppl 1988)?

6 Was the appellant deprived of her civil rights by the Court not appointing an attorney to assist her with oral arguments before the Court and protect her claim of genuine issues of material fact?

7 Was the appellant deprived of her federal and state consitutional rights in the Court's failure to advise borrower of her right to object to processing of facts? See D.B. v. Division of Occupational and Professional Licensing of the Dept. of Business Regulations, State of Utah, 779 P 2d 1145, 117 UAR 18 (Utah 1989)

8 Did the Court err in allowing the UHEAA to seek judicial review prior to enforcing the Utah Rules of Civil Procedure which require that a party may seek judicial review only after exhausting all administrative remedies available? See Utah Code Ann Sec 63-46b-14(2)(Suppl 1988)

9 Did the Court err in not questioning why there was no evidence of the administrative agency's (UHEAA) hearing review as stipulated in the Utah Code pursuant to Utah Code Ann Sec 53B-14-10.4 (Replacement 1987) in order to determine whether there had been due process of law (Vance v Forham, 671 P 2d 124 (Utah 1983)?

10 Was the appellant deprived of her rights in that the Court failed to determine that during the judicial review borrower had been 'substantially

prejudiced' by the administrative agency's (UHEAA) failure to follow prescribed procedures? See Utah Code Ann. 63-46b-16(4)(e)(Suppl. 1988) and Utah Rules of Evidence Rule 103(d).

11. Was borrower denied her civil rights by not having an administrative hearing review where all parties would have to be fully appraised of the evidence and given the opportunity to present evidence, argue, respond, conduct cross examination, submit rebuttal of evidence, and, test the sufficiency of the facts? See State Dept. of Community Affairs v. Utah Merit System Commission, 614 P.2d 1259, 1262 (Utah 1980); Utah Code Ann. Sec. 63-46b-8(1)(d)(Suppl. 1988); and, Utah Code Ann. Sec. 53B-14-105(3) (Replacement 1987).

12. Was the Court remiss in not exploring why UHEAA had not sought assignment of the student loan back to the federal government if as it claimed borrower was in default for at least two years? See 20 United State Congress Sec. 1087cc (a)(5) (Supplement IV 1980).

13. Was the Court remiss in not advising appellant, acting pro se, as to her rights to alter or amend judgment; or, her right to appeal judgment; especially as regards the timeliness required for filing of such motions pursuant to Utah Rules of Civil Procedure Rule 59(e), Utah Code of Appeals Rule 4(a)(c), and, Burgers v. Maiben, 652 P.2d 1320 (Utah 1982).

STATEMENT OF THE CASE

1. Nature of the Case - The appellant seeks relief from judgment because a) the Court failed to consider genuine issues of disputed facts pursuant to borrower's assertion that she was not in default of her student loan; b) borrower was not notified along with notice of default sent by UHEAA that she had the right to an administrative hearing within 30 days after her written response pursuant to Utah Code Ann. Section 53B-14-102(1) and (2)(e); and, c) the Court failed to determine that during the judicial review the borrower had been 'substantially

prejudiced' by the administrative agency's (UHEAA) failure to follow prescribed procedures prior to seeking judicial review pursuant to the provisions of Utah's collection of student loans, Utah Code Ann. Sec(s) 53B-14-104 and 53B-14-105 (Replacement 1987).

2. Course of Proceedings On June 17, 1985, the Loan Servicing Corp. (LSC) (now known as Utah Higher Education Assistance Authority (UHEAA) sent student borrower a student loan deferment through Jan. 15, 1986. Subsequently she was notified in a letter dated March 20, 1986 of denial of deferment. Correspondence continued back and forth; interspersed with telephone contact. Dated Oct. 16, 1986 student borrower received a letter from UHEAA. The tenor of the notice was curse, accusing her of having failed to respond to previous correspondence from 'this' office. Partial text is as follows:

You have failed to respond to previous correspondence from this office regarding your defaulted student loan. Your account has therefore been assessed a late charge. Further, UHEAA declares the entire balance due immediately...

Note: Exhibits E, G, and H attached to the appellant's answer to the summons from the court re student loan, dated 1 March 1987, should provide positive proof that borrower did respond to all correspondence received from UHEAA.

Borrower was served a summons and complaint on February 23, 1987 dated 12th day of December, 1986, from UHEAA and was required to file an answer in writing with the clerk of the Circuit Court within twenty (20) days after service. She filed a response and answer, dated 1 March 1987, with the clerk of the Circuit Court, with a copy to UHEAA attorney, and a copy to UHEAA.

Eight days after being served with the summons from the UHEAA, borrower received a rather threatening letter from the UHEAA. Partial text is as follows:

We have been notified that you were served a summons and complaint. At this point in time we offer you three (3) options:

1. Pay off the loan in its entirety.
2. Enter into an agreement ("Stipulation") with us ... This document would be filed with the court and would allow us to obtain a judgment against you if any monthly payment was missed.
3. The matter can be decided by the court. We will initiate further court action in seeking to have a judgment entered against you.

Please contact Utah Higher Education Assistance Authority ... within ten (10) days from the date of this letter to let us know how you intend to proceed. If we have not heard from you within that time, or if you tell us that you cannot choose option one or two above, we will pursue further court action to have a judgment entered against you.

Note: Borrower was being threatened with court and a judgment without the UHEAA exhausting all administrative remedies by scheduling a formal hearing pursuant to Utah Code Ann. Sections Section 53B-14-102(1) and (2)(e), 53B-14-104, and, 53B-14-105 (Replacement 1987).

Borrower filed an addendum to answer, dated 5 March 1987, with the clerk of the Circuit Court.

Borrower received a letter, dated May 20, 1987, from UHEAA. Letter states errors made in 1985/1986 by the LSC in posting deferment and attempts to transfer costs to appellant's account. Partial text follows:

In conclusion, your loan has been correctly defaulted according to the information in your file. ...

Motion for Summary Judgment, Notice of Hearing, and Affidavit for Attorney's Fee were sent from the UHEAA dated 25th day of June, 1987. No counter affidavit was filed by borrower at that time since there was no notice of what was expected of her except that she was to appear at a hearing by the Court on the 11th day of August, 1987, at the hour of 2:00 p.m. or as soon thereafter as the matter may be heard in Courtroom 202 of the Third Circuit Court at 451 South 200 East, Salt Lake

City, Utah. Acting pro se, borrower appeared at the hearing scheduled but it was postponed.

On 13 August 1987 appellant requested the court not to grant Summary Judgement in favor of the Respondent but against the Respondent.

On or about 5 June 1987, borrower sent a letter to the UHEAA out of frustration being constantly sent letters to answer an action and also having to deal with the fact that the NHEAA also took the matter to court. Text is as follows:

I answered the complaint your office filed with the Circuit Court, State of Utah, with copies both to the clerk of the court and to Mark E. Wainwright, respondent's attorney, and I do not understand why you personally persist in writing me. This is the second letter I have received from you rather than from either your attorney or the court.

Accordingly, it appears that you bothered to send me a complaint through the courts and then negate their authority by dealing with the answers to your complaint yourself. It appears to me that the matter is now left with the courts, and a hearing between the Utah Guaranteed Student Loan Program and myself should be the next step.

Note: Borrower was unaware at this time that pursuant to Utah Code Ann. Sections Section 53B-14-102(1) and (2)(e), 53B-14-104, 53B-14-105, and, 53B-14-107(1)(2), a hearing between borrower and school is supposed to take place before judicial review, if borrower answers notice of default in writing within 30 days.

On 5th day of April 1989 the respondent filed a Motion for Summary Judgment; and appellant filed Counter Memorandum of Points and Authorities Against Support of Respondent's Motion for Summary Judgment dated 7 April 1989.

On or about 19th day of April 1989, respondent filed a request to Submit for Ruling; and appellant on 22 April 1989 filed Counter Request for Denial of Submission for Ruling.

On or about 6th day of March 1989 respondent filed Memorandum of Points and Authorities in Support of Respondent's Motion for Summary Judgment.

Date for oral argument was set for 12 June 1989 before Judge Dennis M Fuchs, Third Circuit Court. Appellant acted pro se. Order for Summary Judgment was issued on 12 June 1989, but respondent did not enter until 29 August 1989, as soon thereafter as appellant filed an Appeal of Judgment on 28 July 1989. Appellant subsequently filed Docketing Statement with Utah Court of Appeals on 18 August 1989.

Utah Court of Appeals sent appellant a Notice of Consideration by the Court for Summary Dismissal dated 22 August 1989 stating " case being considered for summary dismissal under R Utah Ct App 10(e) as an appeal not timely filed under R Utah Ct App 4(a).

On 28 August 1989 appellant filed Memorandum of Response to Court not to summarily dismiss appeal of judgment as appeal timely filed under R Utah Ct App 10(e), 4(a) and 4(c).

On 1 Sept 1989 respondent filed Points and Authorities in Response to the Court's Notice of Consideration by the Court for Summary Dismissal admitting appellant's appeal was timely in light of R Utah Ct App 4(a), and on 5 Sept 1989 respondent filed Amended Response.

On 7 Sept 1989 appellant filed Response to Points and Authorities Submitted by Respondent in Response to the Court's Notice of Consideration by the Court for Summary Judgment. And on 8 Sept 1989 respondent filed Response.

On 9 Sept 1989 appellant filed Response to Respondent's Motion for Summary Dismissal.

On 14 Sept 1989 appellant received Order Re Bond from the Utah Court of Appeals.

On 22 Sept 1989 appellant filed Stay of Judgment Pending Appeal, Impecunious Appeal of Judgment, and, Answer to Order Re Bond.

And finally, on 1 Dec. 1989, appellant filed Motion for Stipulation for Enlargement of Time to File Appellant's Brief with concurrence from respondent.

3. Disposition of the Court The Third Circuit Court granted the respondent a summary judgment against the appellant stating that it appeared to the Court that there were no genuine issues of material fact and that respondent was entitled to judgment as a matter of law. However, "If ... we conclude that there is a dispute as to the genuine issue of material fact, we (the court) must reverse the grant of summary judgment." Atlas Corp. v. Clovis National Bank, 737 P.2d 225, 229 (Utah 1987).

4. Statement of Facts Borrower asserts that she signed two promissory notes for Guaranteed Student Loans (1980, 1982) with a face value of \$7,500.00, however, she has continued to dispute the date and circumstances under which the UHEAA claims these loans became due, and, disputes owing any money over and above the face value of the promissory notes.

Repayment and deferment of these student loans have been in dispute between the borrower and UHEAA since 1985. Throughout the proceedings, however, UHEAA has ignored proper repayment and deferment provisions within the Guaranteed Student Loan Program and has refused to work with the borrower to resolve the conflict. In fact, according to UHEAA's own Request for Deferment of Repayment two-page form (Appendix e), borrower could have qualified for deferment under any number of provisions. UHEAA approved a deferment (June 1985) and then sent a letter of denial of deferment (March 1986), even though student's status had been constant.

Spring Quarter 1986, student borrower met with Grant Moulton, University of Utah Comptroller, to review the university's policy on what constitutes full-time or half-time student status as it affects terms of student loan. There apparently was

a misunderstanding as to what qualifies as part-time for a graduate student, and, therefore, borrower signed up for a min of 45 hours per quarter

In October 1986, UHEAA wrote borrower saying that she had failed to respond to previous correspondence regarding her defaulted student loan. Borrower contacted UHEAA referring them to correspondence sent to former LSC, copies of which were filed as Exhibits E, G, & H in response and answer to summons dated 1 March 1987.

Summons had been received from the court February 23, 1987. On or about March 3, 1987 borrower received a letter from UHEAA advising summons and complaint had been served and stated as one of three options "The matter can be decided by the court. We will initiate further court action in seeking to have a judgment entered against you. Please contact UHEAA within ten days.

Borrower received a letter from UHEAA on or about 20 May 1987 stating that a final demand letter had been sent, certified, on June 19, 1986 and " your loan has been correctly defaulted according to the information in your file ". Borrower answered UHEAA letter on or about 5 June 1987 stating that a hearing between student loan administrating agency and myself should be the next step.

A court hearing was set for August 11, 1987. Borrower appeared pro se, but hearing was postponed. There was no further communication from UHEAA until receipt of a Request for Ruling filed 5th day of April 1989 with the circuit court and dated 19th day of April 1989.

Motions to the court were filed by borrower and UHEAA. On June 12, 1989, Judge Dennis M. Fuchs ordered a judgment in favor of UHEAA.

Whereas UHEAA asserts that borrower was in default of student loan, UHEAA neglected to follow prescribed procedures as outlined in the Utah Code Ann. Section on collection of student loans (Utah Code Ann. Section 53B-14-102(1) and (2)(e), 53B-14-104, 53B-14-105, and, 53B-14-107(1)(2) (Replacement 1987) upon receipt

of a written response, to conduct a formal hearing review, prior to seeking judicial remedy. At a formal hearing review, all parties would have fully appraised of the evidence submitted or to be considered and given the opportunity to present evidence, argue, respond, conduct cross examination, submit rebuttal of evidence, and, test the sufficiency of the facts? In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts.

See State Dept. of Community Affairs v. Utah Merit System Commission, 614 P 2d 1259, 1262 (Utah 1980) and Utah Code Ann. Sec. 63-46b-8(1)(d) (Suppl. 1988).

When Third Circuit Court Judge Dennis M. Fuchs issued a judgment for the UHEAA he stated that "it appeared to the Court that there were no genuine issues of material fact." First, the Court erred in allowing UHEAA to seek judicial review prior to enforcing sections of the Utah Code which require that "a party may seek judicial review only after exhausting all administrative remedies available." See Utah Code Ann. Sec. 63-46b-14 (Suppl. 1988). Second, the Court erred in its failure to enter adequate findings of fact on material issues. See Action v. J.B. Deliran Corp., 737 P 2d 996, 999 (Utah 1987).

SUMMARY OF ARGUMENTS

The grounds for relief of judgment are substantial and merit further proceedings and consideration by the Court. The Court erred in allowing UHEAA to seek judicial review before exhausting all administrative remedies (Utah Code Ann. Sec. 63-46b-14(2) (Suppl. 1988) pursuant to Utah Code Chapter 14 collection of student loan provision (Sec. 53B-14-10-2(1) & (2)(e), 53B-14-104, and, 53B-14-105) (Replacement 1987). If found in default of a student loan, the borrower must be notified in writing, and, if s/he files a written response is entitled to a hearing within 30 days by the administrative agency. A judicial review of the hearing order is then requested when a complaint is filed (Utah Code Ann. Sec. 53B-14-107(1)(2) (Replacement 1987)).

Point I Judicial review prior to exhausting all administrative remedies; and, court's determination whether there has been due process.

The Court erred in allowing the UHEAA to seek judicial review against the borrower in the collection of student loans, prior to enforcing the administrative rules of Utah (Utah Code Ann. Sec. 63-46b-14(2) (Suppl. 1988), wherein the administrative agency may seek judicial review only after exhausting all administrative remedies available.

Chapter 14 of the Utah Code on collection of student loans clearly states that judicial review of an order of a hearing examiner can be obtained by any party by filing a complaint with the court (Utah Code Ann. Sec. 53B-14-107 (Replacement 1987)). There is no evidence in the motions filed by UHEAA with the court that the UHEAA followed its own regulating statutes as no hearing was every duly held (Utah Code Ann. Sec. 53B-14-105 (Replacement 1987)). A hearing examiner would have made specific written findings on the student loan, payments, default, and the balance due and would have entered a written order (Utah Code Ann. Sec. 53B-14-104(5) (Replacement 1987)).

Without an order of a hearing examiner from the administrative agency, the court is unable to determine whether there has been due process of law previous to the request for judicial review, which is, afterall, a function of the court. (Vance v Forham, 671 P 2d 124 (Utah 1983)).

Point II Borrower's testimony was substantially prejudiced; and, denial of civil rights.

The Court shall grant relief to the borrower pursuant to Utah Code Ann. Sec. 63-46b-16(4)(e) in that borrower's written testimony was 'substantially prejudiced' by the fact that the administrative agency, (UHEAA), failed to follow prescribed procedure wherein the agency responsible for collecting the loan must

mail a notice of default to the borrower advising him/her of the right to have a hearing (Utah Code Ann. Sec. 53B-14-102(4) (Replacement 1987) within 30 days of borrower's written response (Utah Code Ann. Sec. 53B-14-104 (Replacement 1987). Borrower responded in writing in a timely manner to all notices received from UHEAA.

Borrower was denied her civil rights by not having an administrative hearing review where all parties would have to be fully apprised of the evidence and given the opportunity to present exhibits, testimony, witnesses, and other material regarding the student loan, payments and default as are relevant (Utah Code Ann. Sec. 53B-14-105(3) (Replacement 1987), and, argue, respond, conduct cross-examination of witnesses, inspect documents, offer evidence in explanation or rebuttal (Utah Code Ann. Sec. 63-46b-8(1)(d). "In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding ..." (State Dept. of Community Affairs v. Utah Merit System Commission, 614 P.2d 1259, 1262 (Utah 1980).

Point III Court erred with prejudice in finding for the respondent soley on appellant's assertion that two promissory notes were signed.

The court erred with prejudice in finding for UHEAA the face value of the promissory notes, interest, and, attorney's fees, based soley on borrower's assertion that two promissory notes were signed.

During the Court proceedings the judge awarded UHEAA judgment based soley on the borrower's written responses acknowledging the face value of the promissory notes, but neglected to take into consideration borrower's written responses stating that she was not in default nor delinquent on her student loan and, therefore, no interest and attorney's fees could accrue. "The findings (of the court) must be articulated with sufficient detail so that the basis of the ultimate

conclusion can be understood" (Smith v. Smith, 726 P.2d 423, 426 (Utah 1986)). The Court also failed to acknowledge 'undue hardship' of the borrower and her rights to deferment based on UHEAA two-page form outlining requirements (Addendum e), for which borrower would have qualified.

"If ... we conclude that there is a dispute as to a genuine issue of material fact, we must reverse the grant of summary judgment ..." (Atlas Corp. v. Clovis National Bank, 737 P.2d 225, 229 (Utah 1987)). "The failure to enter adequate findings of fact on material issues may be reversible order" (Action v. J.B. Deliran Corp., 737 P.2d 996, 999 (Utah 1987)).

Point IV Court erred in not appointing attorney, and, therefore, was responsible to borrower to make known...

The Court erred in not appointing an attorney to assist borrower before the court, therefore, the court was responsible to provide information to the borrower, acting as pro se, as to the procedures under which oral arguments are taken. Because of borrower's lack of experience in a court as to rules of oral arguments, she was denied her right to object to the processing of facts (D.B. v. Division of Occupational and Professional Licensing of the Dept. of Business Regulations, State of Utah, 779 P.2d 1145, 117 UAR 18 (Utah 1989)), and, her rights to a reasonable opportunity to present her position of the facts and to conduct a cross-examination (Utah Code Ann. Sec. 63-46b-8(1)(a)(d) (Suppl. 1988)). Further it states that in all formal adjudicative proceedings, the presiding officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all parties reasonable opportunity to present their position and ... right to conduct cross examination. It was also determined that at a hearing all persons rights under federal and state constitutions were violated if the administrative law judge failed to provide person with an opportunity to cross examine witnesses at the hearing (Vance v. Forham, 671 P.2d 124 (Utah 1983)).

Point V Court should have articulated need for timeliness in filing motions on appeal

The Court should have articulated to the borrower, acting as pro se, her rights to request a new time, amendment of judgment, or her right to appeal judgment, especially in light of the timeliness required for filing of such motions (Burgers v. Maiben, 652 P 2d 1320 (Utah 1982), (Utah Rules of Civil Procedure Rule 59(e), and (R Utah Ct App Rule 4(a)(c)

Point VI Why didn't the respondent seek assignment of student loan back to federal government per United States Congress ruling?

Since the UHEAA believed the borrower to be in default of her student loan for at least two years, why didn't the UHEAA seek assignment of the student loan back to the federal government (20 United State Congress Sec 1087cc (a)(5) (Supplement IV 1980), given appellant's admission of 'undue hardship' and no financial means to discharge the debt incurred

CONCLUSION

Borrower (appellant) request relief from judgment ordered the 12th day of June 1989 in Third Circuit Court pursuant to Utah Code Ann Sec 63-46b-16(4)(e) which provides that upon review, the appellant court shall grant relief if, on the basis of the agency's record, it determines a person seeking judicial review has been 'substantially prejudiced' because the agency failed to follow prescribed procedure

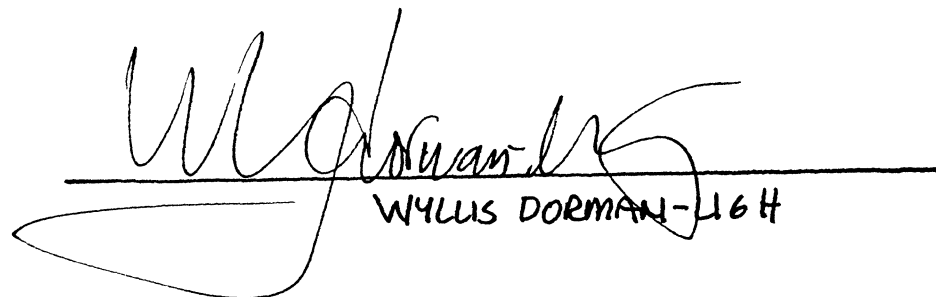
UHEAA (respondent) failed to follow prescribed procedure under Chapter 14 of collection of student loan, Utah Code Ann Sec(s) 53B-14-102(2)(e), 53B-14-104, 53B-14-105, and, 53B-14-107 (Replacement 1987) which states that 30 days after written response to a mailing of notice of default, a hearing is held where the borrower may present evidence, exhibits, testimony, witnesses, and other material

regarding the student loan, payments, and default as are relevant. Judicial review of an order is obtained by a party filing a complaint.

Therefore, according to Action v. J.B. Deliran Corp, 737 P.2d 996, 999 (Utah 1987), "...the failure to enter adequate findings of fact on material issues may be reversible error."

In conclusion, borrower believes court should reverse judgment and compel parties to exhaust all administrative remedies before judicial review pursuant to Utah Code Ann. Sec. 63-46b-14(2).

Dated this 17th day of January, 1990.



WYLLIS DORMAN-J16H

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing brief of appellant by depositing the same in the United States mail, postage prepaid to the following:

Jonathan K. Jensen, Asst. Attorney General
236 State Capitol
Salt Lake City, UT 84114

DATED this 17th day of January, 1990.

By _____
Wyllis Dorman-Ligh, Appellant

UTAH STATUTES

Utah Code Ann. Section 53B-14-102(1) and (2)(e) (Replacement 1987)

53B-14-102. Mailing of notice of default -- Contents of notice.

(1) Upon default in payment of a student loan or an installment payment on a student loan, the entity responsible for collecting the loan may send a notice, by certified mail, to the borrower at the borrower's last know address

(2) The notice shall state the following

(e) the right of the borrower to file a written response to the notice, to have a hearing, to be represented at the hearing, and to appeal any decision of the hearing examiner

Utah Code Ann. Section 53B-14-104 (Replacement 1987)

53B-14-104. Hearing set after receipt of written notice -- Notice of hearing.

If a written response to the notice sent under Section 53B-14-102 is received by the college, university, or board, a hearing is set within 30 days of the receipt of the response, and written notice of the hearing is mailed to the borrower at least 15 days before the date for the hearing

Utah Code Ann. Section 53B-14-105 (Replacement 1987)

53B-14-105 Designation of hearing examiner -- Representation at hearing -- Findings and order of examiner -- Continuance of hearing.

(1) The hearing under Section 53B-14-104 is held before a hearing examiner designated by the college, university, or board

(2) The examiner may not be an officer or employee of the division or office of the college, university, or board responsible for collecting or administering student loans.

(3) The borrower and college, university, or board may be represented at the hearing by an attorney or other person, and may present evidence, exhibits, testimony, witnesses, and other material regarding the student loan, payments, and default as are relevant

(4) The hearing examiner shall make specific written findings on the student loan, payments, default, and the balance due and shall enter a written order

(5) If the hearing examiner finds the borrower has defaulted, the order shall state the fact of default and the balance due on the loan including interest. If the examiner finds no default, the order shall dismiss the claim.

(6) The findings and order of the hearing examiner are filed with the college, university, or board and copies mailed to the borrower within ten days after conclusion of the hearing.

(7) The hearing may be continued by agreement of the parties and approval of the hearing examiner or upon order of the hearing examiner.

Utah Code Ann. Section 53B-14-107(1)(2) (Replacement 1987)

53B-14-107(1)(2). Judicial review of order -- Filing complaint --
Hearing de novo -- Stay of action on lien by tax commission.

(1) Judicial review of an order of a hearing examiner issued under Section 53B-14-1-5 is obtained by any party by filing a complaint with the district court within 20 days after the date of the order.

(2) If a complaint is filed, the matter is heard by the district court de novo.

Utah Code Ann. Sec. 63-46b-8(1)(a)(d) (Supplement 1988)

(1) In all formal adjudication proceedings, a hearing shall be conducted as follows:

(d) the presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross examination, and submit rebuttal evidence.

Utah Code Ann. Sec. 63-46b-14(2) (Supplement 1988). Judicial review.

(2) A party may seek judicial review only after exhausting all administrative remedies available.

Utah Code Ann. Sec. 63-46b-16(4)(e) (Supplement 1988)

provides that upon review

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been 'substantially prejudiced' by reasons stated therein.

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure.

Utah Code Ann. Section 78-2a-3 (Replacement 1987)

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(d) appeals from the circuit courts ...

UTAH COURT RULES

Utah Rules of Civil Procedure Rule 59(e)

Rule 59. New trials; amendments of judgment.

(e) Motion to alter or amend a judgment A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment

Utah Rules of Evidence Rule 103(d)

(d) nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court

R. Utah Ct. App. 3(a). Appeal as of right: How taken.

(a) an appeal may be taken from the final orders and judgments of a circuit court to the Court of Appeals by filing a notice of appeal with the clerk of the court from which the appeal is taken within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is a ground only for such action as the Court of Appeals deems appropriate

R. Utah Ct. App. 4(a)(c). Appeal as of right: When taken

(a) Appeal from final judgment and order In a case in which an appeal is permitted as a matter of right from circuit court to the Court of Appeals, the notice of appeal required by Rule 3 shall be filed with the clerk of the court from which the appeal is taken within 30 days after the date of entry of the judgment or order appealed from

(c) Filing prior to entry of judgment or order Except as provided in paragraph (b) of this rule, a notice of appeal filed after the announcement of a decision, a judgment, or an order but before the entry of the judgment or order of the circuit court shall be treated as filed

R. Utah Ct. App. 10(e). Motions for summary disposition.

(e) Ruling of court The court, on its own motion and on such notice as it directs, may dismiss an appeal or a petition for review if the court lacks jurisdiction, may summarily affirm the judgment or order which is the subject of review if it plainly appears that no substantial question is presented, or may summarily reverse in cases of manifest error

CASES CITED

Action v. J.B. Deliran Corp, 737 P.2d 996, 999 (Utah 1987) 2

The failure to enter adequate findings of fact on material issues may be reversible error.

Atlas Corp. v. Clovis National Bank, 737 P.2d 225, 229 (Utah 1987) 2

If ... we conclude that there is a dispute as to a genuine issue of material fact, we must reverse the grant of summary judgment and remand for trial on that issue.

Burgers v. Maiben, 652 P.2d 1320 (Utah 1982) 3

D.B. v. Division of Occupational and Professional Licensing of the Dept. of Business Regulations, State of Utah, 779 P.2d 1145, 117 UAR 18 (Utah 1989) 2

Smith v. Smith, 726 P.2d 423, 426 (Utah 1986) 2

The findings must be articulated with sufficient detail so that the basis of the ultimate conclusion can be understood.

State Dept. of Community Affairs v. Utah Merit System Commission, 614 P.2d 1259, 1262 (Utah 1980) 3

... All parties must be fully appraised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding..

Vance v. Forham, 671 P.2d 124 (Utah 1983) 2

In case ... at hearing his rights under federal and state constitution were violated because the administrative law judge failed to provide him with an opportunity to cross examine the division's witnesses at the hearing. It is the function of a court called on to review an order of an administrative agency to determine whether there has been due process of law.

UTAH GUARANTEED LOAN PROGRAM
(Includes the PLUS Program)

09001

For loans guaranteed under the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.)

Warning: Any person who knowingly makes a false statement or misrepresentation in this form shall be subject to a fine of not more than \$10,000 or imprisonment for not more than five years or both under the provisions of Sec. 20 U.S.C. 1097

REQUEST FOR DEFERMENT OF REPAYMENT

SECTION 1 TO BE COMPLETED BY BORROWER

WILLIS DORMAN-L164
BORROWER NAME
634 S. 700 S.
STREET ADDRESS
SLC
CITY
UT. 84102
STATE ZIP

082-28-9672
SOCIAL SECURITY NUMBER
CONTINUING GRAD. STUDENT THRU SUMMER
Deferment requested for
UNTIL JAN 1986
1985
MM/DD/YY TO MM/DD/YY

I CERTIFY THAT I AM ELIGIBLE FOR DEFERMENT OF REPAYMENT BECAUSE I AM (circle one)

NO
TIME
LIMITATION

1 Pursuing full-time study at a school that is participating in the GSLP, a citizen or national of the United States and am studying at a school not located in the United States

2 Receiving rehabilitation training under an approved program or scheduled to receive such training within 3 months. Note: certification of your status is necessary from both the government agency which recognizes the training program and the program in which you are participating (See back of this form for additional eligibility requirements.)

3 Studying full-time in an eligible graduate fellowship program. (See back of this form for additional eligibility requirements.)

3 YEAR
LIMITATION

4 Serving on active duty status in the armed forces of the United States or an officer in the Commissioned Corps of the Public Health Service

5 Serving as a full time volunteer under the Peace Corps Act or in an Action program under Title I of the Domestic Volunteer Service Act of 1973

6 Serving as a full time volunteer in a tax exempt organization comparable to volunteer service in the Peace Corps or full-time volunteer service in an Action administered program (See back of this form for additional eligibility requirements.)

7 Temporarily totally disabled (or am unable to work because of the care required of a spouse who is temporarily totally disabled) (See back of this form for additional eligibility requirements.)

2 YEAR
LIMITATION

8 Serving an internship or residency program approved by the Secretary of Education which must be successfully completed in order to receive recognition required to begin professional practice or service. I further certify that I have received a Baccalaureate or professional degree

1 YEAR
LIMITATION

9 Conscientiously seeking but unable to find full-time employment in the United States for a single period not to exceed one year (See back for additional eligibility requirements.)

I claim exemption from payment of the principal on my guaranteed loan(s) during the period indicated above. I agree to notify the lender immediately upon termination of my claimed status. I further agree to provide documentation annually to support my continued deferment status, unless I have an unemployment deferment, in which case I must provide documentation at least once every six months to support my deferment status.

Unless I have checked the box below, if I am eligible for a post deferment grace period on some but not all my guaranteed loans, I agree to postpone repayment on the non-eligible loans, as described in the POST DEFERMENT GRACE PERIOD section on the back of this form.

SIGNATURE OF BORROWER

DATE

By checking the box below, I do not agree to the terms set forth on the back of this form and agree that I will begin repayment of my loan(s) disbursed on or after October 1, 1981, immediately following the end of any period of deferment. I will begin repayment of my loan(s) disbursed before October 1, 1981, six months later.

☐ I do not wish to postpone payments on my loans made on or after October 1, 1981, under the terms described on the back of this form.

SECTION 2 CERTIFICATION OF STATUS

NOTE: See reverse side for the title of official authorized to certify. I certify that the above claimed status is correct for the period of JUNE 1985 to JAN. 1986 and that any additional conditions for eligibility as set forth on this form have been met. I DECLARE UNDER PENALTY OF PERJURY, UNDER THE LAWS OF THE UNITED STATES OF AMERICA, THAT THE FOREGOING IS TRUE AND CORRECT.

NAME OF ORGANIZATION

ADDRESS

CITY

SIGNATURE OF OFFICIAL

TITLE (SEE REVERSE SIDE)

DATE

ADDITIONAL REQUIREMENTS

SECTION 1, ITEM 2: PURSUING REHABILITATION TRAINING PROGRAM

In order to be eligible to receive this deferment Federal Regulations require the rehabilitation training program meet the following requirements

- 1) Be recognized by a government agency with specific responsibilities for rehabilitation programs in the borrower's area
- 2) Agree to provide services under a written individualized plan for the borrower's rehabilitation that is specific as to the date services are expected to end
- 3) Structured in a way that requires a substantial commitment by borrower to his or her rehabilitation

SECTION 1, ITEM 3: PARTICIPATING IN A GRADUATE FELLOWSHIP PROGRAM

In order to be eligible to receive this deferment Federal Regulations require that

- (1) The fellowship program
 - (i) Provide sufficient financial support to graduate fellows to allow for full-time study for at least six months
 - (ii) Require prior to award of that financial support a written statement from each applicant which explains the applicant's objectives
 - (iii) Require a graduate fellow to submit periodic reports projects or other evidence of the graduate fellow's progress and
- (2) The borrower
 - (i) Hold at least a Bachelor's degree conferred by an institution of higher education
 - (ii) Is engaged in full-time study that may be independent of an educational or cultural institution in an academic or professional subject area for which the borrower has shown an interest and ability
 - (iii) Has been recommended by an institution of higher education for acceptance into the graduate fellowship program

SECTION 1, ITEM 6: SERVING AS A VOLUNTEER IN A TAX EXEMPT ORGANIZATION

In order to be eligible to receive this deferment Federal Regulations require that

- (1) The borrower serves in an organization which is exempt from taxation under Section 501 (C)(3) of the Internal Revenue Code of 1954
- (2) The borrower provides service to low income persons and their communities in order to assist them in eliminating poverty and poverty related human social and environmental conditions
- (3) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the Action agency Compensation includes a subsistence allowance necessary travel expenses and stipends
- (4) The borrower as part of his or her duties does not give religious instruction conduct worship services engage in religious proselytizing or engage in fund raising to support religious activities
- (5) The borrower has agreed to serve on a full time basis for a term of at least one year

SECTION 1, ITEM 7: TEMPORARILY TOTALLY DISABLED

In order to be eligible to receive this deferment Federal Regulations require that

- (1) The borrower who is temporarily totally disabled is one who by reason of injury or illness cannot be expected to be able to attend school or to be gainfully employed during an extended period of time needed to recover from such an injury or illness, or
- (2) The borrower's spouse subject to the above definition requires continuous nursing or similar services

SECTION 1, ITEM 9: UNEMPLOYMENT

In order to be eligible to receive this deferment Federal Regulations require that

- (1) The borrowers submit a written request signed and dated to the holder of the loan
- (2) The request contain a statement describing the borrowers search for full-time employment the borrower's latest permanent home address and/or temporary address certification that the borrower has registered with a public or private employment agency the borrower's agreement to notify the lender promptly when he or she becomes employed

SECTION 2, TITLE: AUTHORIZED CERTIFYING OFFICIALS OR ORGANIZATIONS

- (1) Registrar of School of Attendance
- (2) A State vocational rehabilitation agency
A State agency for mental health services
A State agency for drug abuse
A State agency for alcohol abuse treatment or
The Veterans Administration
- (3) Fellowship program official
- (4) Commanding Officer
- (5) Peace Corps or Action Agency official
- (6) Tax exempt organization official
- (7) Physician
- (8) Internship program official

P O S T D E F E R M I O	G R A C E P E R I O D	If I am eligible for a six-month post-deferment grace period on some but not all of my GSLP loans, I agree that, following any deferment period the lender may postpone for six months my payments on loans made on or after October 1, 1981, which are not eligible for the post-deferment grace period. Under this agreement the lender may consolidate my loans in a single repayment agreement, and I will not be required to make payments on two separate accounts each month when repayment commences. This means that for those loans on which payments are postponed
		<ul style="list-style-type: none">• No payment of either principal or interest will be required during the six months following a period of deferment and no bills or coupon books will be sent to me for those months• Interest will accrue during the six-month period• Unpaid accrued interest will be added to and become part of the outstanding principal balance of my loans at the end of the six month period

When this post-deferment grace period will first be applied to accrued interest, and then to the principal