

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE

**Reginald M. Glatt
Cynthia Ann Glatt,**

Case No. 00-11773

Debtors.

Chapter 7

Cynthia Ann Glatt,

Plaintiff,

v.

Adv. Pro. No. 00-5296

**SLSC and
Tennessee Student Assistance Corporation,**

Defendants.

**MEMORANDUM OPINION AND ORDER RE
TENNESSEE STUDENT ASSISTANCE CORPORATION'S 12(b)(6) MOTION TO
DISMISS FOR FAILURE TO STATE A CLAIM**

At issue in this case is whether or not student loans originally obtained from a non-governmental, for-profit agency which were later consolidated under Section 428c of the Higher Education Act of 1965 are dischargeable under 11 U.S.C. § 523(a)(8). The Court conducted a trial in this matter on November 8, 2000. FED. R. BANKR. P. 7001. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the trial and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

The debtor in this case originally obtained two student loans, one in the amount of \$2,625.00 and the other in the amount of \$4,000.00, for the purpose of attending cosmetology school. On June 6, 1990, the debtor consolidated the two original loans with Volunteer State Student Funding Corporation under the Volunteer State Consolidation Program. The total amount, including interest, of the consolidation loan was \$9,999.12. Pursuant to the terms of the new loan, the debtor was to make monthly payments of \$83.33 for a period of ten (10) years. The "Borrower Certification" appearing directly above the debtor's signature on the consolidation promissory note states "By means of this application, I am applying to have my loans consolidated . . . under Section 428c of the Higher Education Act of 1965."

In bringing this adversary proceeding against SLSC and the Tennessee Student Assistance Corporation (hereinafter "TSAC"), the debtor alleges that the consolidation loan is not subject to § 523(a)(8)'s non-dischargability provisions for three reasons. First the debtor alleges that the two original loans were made by non-governmental, for-profit agencies and, therefore, do not come within § 523(a)(8). Secondly the debtor alleges that the consolidation loan did not confer an educational benefit upon her and is therefore subject to discharge.¹

TSAC filed a "Motion to Dismiss" the debtor's complaint on October 10, 2000. In its motion, TSAC alleges that the debtor has failed to state a claim upon which relief may be granted. TSAC alleges that by naming TSAC as a defendant to the adversary proceeding, the

¹The debtor has not alleged that excepting the debt from discharge will impose an undue hardship on her.

debtor negates her own contention that the consolidated loan was not guaranteed by a government agency.

II. CONCLUSIONS OF LAW

Section 523(a)(8) of the Bankruptcy Code provides that:

(a) A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt –

. . .

(8) for an educational benefit overpayment or loan 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, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;

11 U.S.C. § 523(a)(8). To except a debt from discharge under this provision, it must be proven that the loan was an "educational loan" and that it was made or guaranteed by a governmental unit or a nonprofit institution.

"Education loan" is not defined by the Bankruptcy Code, but courts have found that § 523(a)(8)'s reach does include loans for vocational education. *In re Mattingly*, 226 B.R. 583 (Bankr. W.D. Ky. 1998). Additionally, numerous courts have found that as long as the original loans were for educational purposes within the meaning of § 523(a)(8), the subsequent consolidation loans are educational loans as well. *Rudnicki v. Southern College of Optometry (In re Rudnicki)*, 228 B.R. 179, 181 (6th Cir. BAP 1999); *In re Flint*, 238 B.R. 676, 678 (E.D. Mich. 1999); *In re Lapusan*, 244 B.R. 423, 425 (Bankr. S.D. Ill. 2000); *In re Shaffer*, 237 B.R. 617, 620 (Bankr. N.D. Tex. 1999).

Loans made or consolidated under § 428c of the Higher Education Act are guaranteed by the Secretary of the Department of Education. 34 C.F.R. § 682.100(b)(2)(i). As a result, these loans are made, insured or guaranteed by a governmental unit within the meaning of § 523(a)(8)

and, therefore, are non-dischargeable. *Sheer v. Educational Credit Mgmt. Corp.*, 245 B.R. 236, 240 (D. Md. 1999); *Hiatt v. Indiana State Student Assistance Commission*, 36 F.3d 21, 24 (7th Cir. 1994); *Rudnicki*, 228 B.R. at 181.

In the case at bar, the promissory note for the consolidation loan contained the language "By means of this application, I am applying to have my loans consolidated . . . under Section 428c of the Higher Education Act of 1965." As a result of this statement and by virtue of the fact that the consolidation loan was made, insured, or guaranteed by a governmental agency, the debtor's consolidation loan to TSAC falls within the purview of § 523(a)(8). The Court is therefore compelled to grant TSAC's "Motion to Dismiss for Failure to State a Claim."

III. ORDER

It is therefore **ORDERED** that Tennessee Student Assistance Corporation's Motion to Dismiss for Failure to State a Claim is **GRANTED**.

IT IS SO ORDERED.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: December 7, 2000