

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 18 2009

PUBLIC SERVICE
COMMISSION

In the Matter of:

LINDA LOU WOODS)
)
COMPLAINT)
)
v.)
)
KENTUCKY POWER COMPANY)
)
DEFENDANT)

Case No. 2009-00165

**KENTUCKY POWER COMPANY'S
ANSWER AND MOTION TO DISMISS**

For its "Answer and Motion to Dismiss" Kentucky Power Company states:

Introduction

Kentucky Power's Motion to Dismiss and Answer below address the allegations set forth in (a) Ms. Woods' April 20, 2009 Complaint; (b) the April 10, 2009 letter from Ms. Woods to the Commission attached to the Complaint; and (c) the April 22, 2009 letter from Ms. Woods to the Commission of record in the Commission's files. As set forth in more detail below, the actions about which Ms. Woods complains were in accordance with Chapter 278 of the Kentucky Revised Statutes, the Commission's regulations, and the Company's tariffs. Further, the Company's actions were reasonable. As such, her complaint fails to state a claim for which relief may be granted and must be dismissed.

Answer

A. Complaint.

1. In response to Ms. Woods' complaint Kentucky Power is without information sufficient to admit or deny her allegation that she sustained a \$300 food loss when her service

was terminated on April 6, 2009 and therefore denies the same. Kentucky Power further states that it is without information sufficient to admit or deny her allegation that she is owed \$505.71 and therefore denies the same. Kentucky Power notes that on April 9, 2009 Ms. Woods paid Kentucky Power the sum of \$505.71 in partial payment of the amount due for service rendered by Kentucky Power to Ms. Woods. The charge was for service rendered by Kentucky Power to Ms. Wood following the date she filed her petition for relief under Chapter 7 of the bankruptcy laws of the United States.

B. April 10, 2009 Letter to the Commission.

2. In response to the first sentence of her letter, Kentucky Power admits that on November 26, 2008 James Ray Woods and Linda Lou Woods filed for relief under Chapter 7 of the bankruptcy laws of the United States. Kentucky Power further admits so much of the second sentence of her letter that alleges the records of the United States Bankruptcy Court for the Eastern District of Kentucky reflect an Order of Discharge was entered her favor by on March 24, 2009 (not March 23, 2009 as alleged in her letter.) Kentucky Power denies the remainder of the allegations.

3. Kentucky Power admits so much of the third sentence of Ms. Woods' letter as alleges that upon receiving notice on December 9, 2008 that Ms. Woods had filed for relief under the bankruptcy laws on November 26, 2008, Kentucky Power applied her deposit of \$168.00 to her pre-petition account balance of \$194.35, closed her existing (pre-petition) account, and established a new account in her name. The former account was closed and the new account established on December 10, 2008 effective November 26, 2008. Kentucky Power is without information sufficient to admit or deny the remainder of the sentence and therefore denies the same.

5. Kentucky Power is without information sufficient to admit or deny the allegations in fourth and fifth sentences of Ms. Woods' letter and therefore denies the same.

6. Kentucky Power admits so much of the sixth sentence of Ms. Woods' letter as alleges her service was terminated on April 6, 2009 for non-payment of charges incurred subsequent to the date she filed for relief under the bankruptcy laws, and denies that the termination was without notice, or that the termination was contrary to the Commission's regulations. Kentucky Power is without information sufficient to admit or deny the remainder of the sentence and therefore denies the same.

7. Kentucky Power is without information sufficient to admit or deny the allegations contained in the seventh sentence of Ms. Woods' letter and therefore denies the same.

8. In response to the eighth and ninth paragraphs of Ms. Woods' April 10, 2009 letter, Kentucky Power admits that Ms. Woods contacted the Company's Customer Solution Center on or about April 7, 2009 about the termination of her service. In the course of that call, Ms. Woods was advised that service would be restored upon her payment of \$505.71 (\$470.77 past due amount; \$12.94 reconnection charge; \$22.00 of an additional \$68.00 deposit to be paid in three installments.) Kentucky Power is without information sufficient to admit or deny the remaining allegations contained in the eighth and ninth sentences of Ms. Woods' letter and therefore denies the same.

9. Kentucky Power admits that \$505.71 was paid on Ms. Woods account on April 9, 2009, that service was restored the same day, and is without information sufficient to admit or deny the allegations contained in the remainder of the sentence and therefore denies the same.

10. Kentucky Power is without information sufficient to admit or deny the allegations contained in the remainder of Ms. Woods letter and therefore denies the same except that Kentucky Power admits Ms. Woods service was terminated for non-payment on April 6, 2009 in accordance with the Company's tariffs and the Commission's regulations.

C. April 22, 2009 Letter.

11. The allegations in Ms. Woods April 22, 2009 letter are not easily parsed. Except as otherwise admitted herein, the allegations in her April 22, 2009 letter are denied because Kentucky Power is without information sufficient to admit or deny the allegations.

12. Kentucky Power admits:

(a) Ms. Woods filed a complaint with the Commission;

(b) Five hundred and five dollars and seventy one cents was paid on Ms. Woods account on April 9, 2009;

(c) Ms. Woods paid a \$168.00 deposit (not \$150 as alleged in her letter) on her pre-bankruptcy petition account. That deposit was applied to the outstanding balance on her pre-petition account when that account was closed effective the date of her bankruptcy petition;

(d) The \$178 deposit referred to by Ms. Woods in her April 22, 2009 letter was required as deposit for her new (post-petition) account and was calculated in accordance with 807 KAR 5:006, Section 7. The new deposit was established and billed in December, 2008 when the new account was established, and not in April, 2009 as alleged by Ms. Woods.

(e) On April 7, 2009, Kentucky Power required an additional deposit of \$68.00 (not the \$222.00 alleged by Ms. Woods) as permitted by 807 KAR 5:006, Section 6(3). The additional deposit was payable in three installments of \$22.00, \$23.00 and \$23.00, for a total deposit on the post-petition account of \$246.00.

(f) On April 14, 2009, Kentucky Power notified Ms. Woods by mail that her service would be terminated after April 28, 2009 if the past due amount of \$136.93 on her post-petition account was not paid prior to termination. The past due amount of \$136.93 represented charges that became past due subsequent to the April 6, 2009 termination of service.

(g) Ms. Woods' place of service lies within Kentucky Power's exclusive service territory.

13. All charges imposed and actions taken by Kentucky Power were in conformity with the Company's tariffs and the Commission's regulations. Kentucky Power denies any allegations in the April 22, 2009 letter to the contrary.

Kentucky Power Company's Affirmative Statement of Facts In Response
To Ms. Woods' Allegations.

To provide the Commission with a complete and accurate understanding of Kentucky Power's efforts to resolve this matter, Kentucky Power further states:

A. Pre-Petition Account

14. Ms. Woods original (pre-petition) account was established on July 14, 2008 and was closed on December 9, 2008, effective November 26, 2008 (the date her petition for relief under Chapter 7 of the bankruptcy laws was filed.)

15. During this period, Ms. Woods incurred charges of \$168.00 for the initial deposit, \$446.35 for service, and a \$3.40 for late payment charge (November 6, 2008). During the same period, Ms. Woods made payments of \$168.00 for the initial deposit (August 1, 2008) and \$255.40 for service rendered. In addition, Ms. Woods received a credit of \$3.59 on December 9, 2008 (when the account was closed) for interest on her deposit.

16. When Ms. Woods' account was closed on December 9, 2008 her deposit of \$168.00 and the credit of \$3.59 for interest (total of \$171.59) was applied to her outstanding

pre-petition balance of 194.35. The balance of \$22.76 was discharged and Kentucky Power has made no effort to collect the amount following notice of Ms. Woods' filing under the bankruptcy laws.

B. Post-Petition Account

17. A new account was established on December 10, 2008 (effective November 26, 2008). Because the deposit paid in connection with her former account had been applied to the balance due on that account when it was closed, the new account required a deposit. The deposit amount was \$178.00 as calculated in accordance with the Commission's regulations and the Company's tariffs.

18. On or about December 10, 2008, Kentucky Power rendered a bill to Ms. Woods in the amount of \$315.08 (\$137.08 for service from November 26, 2008, plus the deposit of \$178.00). Payment was due December 29, 2008.

19. On or about January 2, 2009, Ms. Woods made a payment of \$78.00. The payment was applied to the deposit, leaving a balance owing of \$237.08 (\$100 balance on the deposit plus \$137.08 for service.)

20. On or about January 12, 2009, Kentucky Power rendered a bill in the amount of \$450.04 (\$237.08 past due amount, plus \$2.95 late payment charge, plus \$210.07 due for current service, less \$0.06 for interest on Ms. Woods deposit).

1. The January 14, 2009 Disconnect Notice.

21. On or about January 14, 2009, Kentucky Power notified Ms. Woods by mail that her service would be terminated after January 28, 2009 unless payment of \$239.97 (\$237.08 past due amount, plus \$2.95 late payment charge, less \$0.06 credit for interest on deposit) was received prior to termination. A copy of the January 14, 2009 notice is attached as **EXHIBIT 1**.

22. On or about January 29, 2009, Kentucky Power and Ms. Woods entered into a payment arrangement with respect to the \$450.04 owed by Ms. Woods. The amount consisted of the \$239.97 past due balance plus \$210.07 current service balance. The plan required Ms. Woods to make an initial payment of \$100.00 at the time of the agreement (January 29, 2009). The balance of \$350.04 was deferred and was to be paid through four additional payments of \$50.00, \$100.01, \$100.01 and \$100.02 that were due February 2, 2009, February 26, 2009, March 27, 2009 and April 28, 2009 respectively. Under the terms of the payment arrangement, these payments were to be made in addition to timely payment for all subsequently billed current charges. A copy of the January 29, 2009 letter memorializing the deferred payment plan is attached as **EXHIBIT 2**.

23. On or about February 3, 2009, Ms. Woods paid (albeit late) the initial \$100.00 for implementation of the deferred payment plan, leaving the entire \$350.04 deferred balance due on the deferred payment plan.

24. On or about February 10, 2009, Kentucky Power rendered a bill in the amount of \$314.99 (\$150.01 on the deferred payment agreement [the \$50.00 February 2, 2009 deferred payment and the \$100.01 February 26, 2009 deferred payment], plus \$164.98 due for current service.) The bill was to be paid on or before February 26, 2009.

25. On February 20, 2009, Ms. Woods made a payment of \$50.00, which was applied to her deposit. Ms. Woods did not pay the \$100.01 installment on the deferred payment plan, or the \$164.98 due for current service, thereby breaching the agreement by the February 26, 2009 due date.

2. The March 13, 2009 Disconnect Notice.

26. On March 13, 2009, Kentucky Power notified Ms. Woods by mail that her service would be terminated after March 27, 2009 unless payment of \$470.77 (\$200.03 for the balance due under the breached payment agreement, plus \$5.75 late payment charge, plus 314.99 past due on the February 10, 2009 bill, less Ms. Woods' February 20, 2009 payment of \$50.00) was received prior to termination. A copy of the March 3, 2009 notice is attached as **EXHIBIT 3.**

27. Ms. Woods failed to make any payment and her service was terminated on April 6, 2009.

28. On or about April 7, 2009 Ms. Woods contacted Kentucky Power to re-establish her service. At that time. Ms. Woods was informed that her service could be re-established upon payment of the past due amount plus the reconnection charge provided for in Kentucky Power's tariff. In addition, she was informed that her required deposit was being increased in accordance with 807 KAR 5:006, Section 7(3) by \$68.00 (not \$220.00 as alleged by Ms. Woods) to \$246.00 (\$178.00 deposit on post-termination account plus \$68.00 adjustment pursuant to 807 KAR 5:006, Section 7(3)). She further was informed that the \$68.00 increase would be billed in three approximately equal monthly installments (\$22.00, plus \$23.00, plus \$23.00).

29. On April 9, 2009, Ms. Woods service was re-established following her payment of the required \$505.71 (\$470.77 past due amount, plus a \$12.94 reconnect charge, plus \$22.00 partial payment on the deposit adjustment.)

30. On April 9, 2009, Kentucky Power rendered a bill to Ms. Woods in the amount of \$236.29 (\$136.93 for previous charges and \$99.36 for current charges.) The previous

charges consisted of \$128.30 for service billed on March 11, 2009 plus a \$8.63 on premises collection charge incurred in connection the termination of Ms. Woods' service on April 6, 2009. The current portion of the April 9, 2009 bill consisted of \$76.36 for current service, plus the second installment (\$23.00) of the deposit adjustment.

3. The April 14, 2009 Disconnect Notice.

31. On April 14, 2009, Kentucky Power notified Ms. Woods by mail that her service would be terminated after April 28, 2009 if she failed to pay \$136.93 (the previous charges portion of the April 9, 2009 billing) prior to termination of service. A copy of the April 14, 2009 notice is attached as **EXHIBIT 4**.

32. On April 28, 2009, Ms. Woods paid Kentucky Power the \$136.93 past due amount and her service was not terminated.

33. On May 12, 2009, Kentucky Power rendered a bill to Ms. Woods in the amount of \$190.29 (\$99.36 for previous charges, plus \$90.93 for current service.) The previous charges consisted of \$76.36 for service billed on April 9, 2009, plus \$23.00 for the second installment of the deposit adjustment. The \$99.36 was due on or before April 28, 2009.

4. The May 13, 2009 Disconnect Notice.

34. On May 13, 2009 Kentucky Power notified Ms. Woods by mail that her service would be terminated after May 28, 2009 if she failed to pay \$99.36 (the previous charges portion of the May 12, 2009 billing. This amount was originally billed on April 9, 2009) prior to termination of service. A copy of the May 13, 2009 notice is attached as **EXHIBIT 5**.

35. Ms. Woods has not sought leave to amend her complaint to include the allegations in her April 22, 2009 letter that Kentucky Power unreasonably adjusted her deposit following the termination of her service on April 6, 2009 for non-payment. As such, the full

\$99.36 is subject to collection and may serve as a basis for terminating her service under 807 KAR 5:006, Section 10(6). To allow the Commission an adequate opportunity to resolve this matter, Kentucky Power will not terminate Ms. Woods service in accordance with its May 13, 2009 notice if Ms. Woods pays the Company \$76.36 within the period indicated in the notice. The \$76.36 is for service first billed on April 9, 2009 and is not the subject of any complaint by Ms. Woods.

Affirmative Defenses

34. Ms. Woods' complaint fails to state a claim for which relief may be granted.

35. Ms. Woods' claim for \$300.00 for alleged food loss is barred by paragraph 7 of sheet 2-4 of the Company's terms and conditions. The company acted with reasonable diligence in terminating Ms. Woods' service for non-payment.

Motion To Dismiss

Broadly read, Ms. Woods filings seemingly raise two claims: (a) that her service was wrongfully terminated by Kentucky Power without notice on April 6, 2009; and (b) that Kentucky Power improperly required her to provide additional deposits. In support of her claims, Ms. Woods argues that the unpaid debt for which her service was terminated on April 6, 2009 was discharged in bankruptcy even though the service was rendered, and hence the debt incurred, after she filed her petition in bankruptcy.

A. Ms. Woods' March 17, 2009 Amendment Of Her Petition To Include The Amount Owed Kentucky Power For Service Provided Following The Date She Filed Her Petition Was Without Legal Effect.

Ms. Woods filed for relief under Chapter 7 of the Bankruptcy laws.¹ Pursuant to 11 U.S.C. § 727(b), in a Chapter 7 proceeding only those debts arising prior to the date the petition

¹ Docket Sheet, *In re: James Ray Woods and Linda Lou Woods*, Case No. 08-10626-JMS (Filed November 26, 2008). A copy of the docket sheet is attached hereto as **EXHIBIT 6**.

for relief is filed are subject to discharge.² Post-petition debts are not subject to discharge.³ This is the case even if, as Ms. Woods attempted here, the debts are listed on a schedule: “[d]ebts incurred after the date of the filing of the chapter 7 petition, although they may appear on a list of creditors, are not discharged.”⁴

Kentucky Power terminated Ms. Woods’ service for her failure to pay Kentucky Power’s tariffed rates for service rendered following her November 26, 2008 Chapter 7 petition. Upon receiving notice of Ms. Woods’ bankruptcy, Kentucky Power closed her existing account, effective the date of her petition, and opened a new account with a beginning balance of \$0.00. The past due amounts leading to the termination of her service were first billed in connection with her December 10, 2008 (November 26, 2008 to December 8, 2008) and January 9, 2009 (December 8, 2008 to January 9, 2009) statements. Indeed, the amount listed on her March 17, 2009 amendment equaled the total due on Ms. Woods’ March 11, 2009 statement.⁵

Ms. Woods’ contention that her post-petition debt to Kentucky Power also was discharged is simply wrong as a matter of law. Certainly, nowhere in her complaint or her two letters does she cite any authority that supports her claim. Accordingly, it must be dismissed.

² “Except as provided in Section 523 of this title, a discharge under section (a) of this section discharges the debtor from all debts that arose *before the date of the order for relief under this chapter*....” The “order for relief” is not the order of discharge. Rather, it automatically arises with the filing of a voluntary petition for bankruptcy. 11 U.S.C. § 301(b) (“The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.”) See also, *In re Clarke*, 266 B.R. 301, 305 (Bankr. E.D. Pa. 2001) (“The commencement of a voluntary case under Chapter 7, by the filing of a petition, constitutes an ‘order for relief.’”)

³ *In the Matter of Rosteck*, 899 F.2d 694, 696 (7th Cir. 1990) (“Debts arising after the bankruptcy case has commenced are not discharged.”); *In re Clarke*, 266 B.R. 301, 305 (Bankr. E.D. Pa. 2001) (“debts incurred post-petition are generally nondischargeable.”).

⁴ *In re: Hicks*, 144 B.R. 419, 420 Bankr. E. Ark 1992).

⁵ A copy of the facsimile statement is attached hereto as EXHIBIT 7. A copy of the amendment is attached hereto as EXHIBIT 8.

B. Kentucky Power Was Authorized To Adjust the Amount Of Ms. Woods' Deposit In Light Of Her Usage And Her Failure To Pay Her Bills When Due.

807 KAR 5:006, Section 7(3) authorizes utilities to require additional deposits under specified circumstances. Pertinent to Ms. Woods' claim is that portion of the regulation that provides:

If substantial change in usage has occurred, the utility may require that an additional deposit be made. No additional or subsequent deposit shall be required of residential customers whose payment record is satisfactory.

When Ms. Woods' service was reconnected on April 9, 2009, Kentucky Power increased her deposit by approximately one-third (\$68.00) from \$178.00 to \$246.00 in light of her usage since the new account was established after she filed for bankruptcy on November 26, 2008. To mitigate any burden, the Company agreed to allow Ms. Woods to pay the additional deposit in three nearly equal payments.

Nor can Ms. Woods argue that her payment record was satisfactory. In the five months following her bankruptcy petition, Ms. Woods:

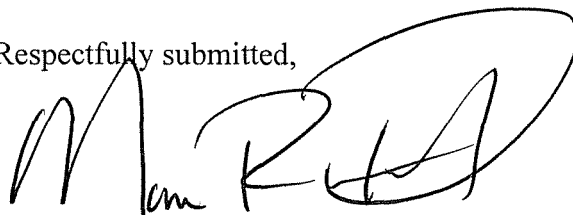
- Entered into and almost immediately breached a deferred payment agreement;
- Was assessed two late payment charges;
- Received two disconnect notices;
- Paid only \$50.00 on a \$599.07 bill for service;
- Had her service terminated for non-payment.

Simply stated, Kentucky Power acted reasonably and in conformity with the Commission's regulations by requiring a modest additional deposit from Ms. Woods.

Conclusion

For the reasons set forth hereinabove, Kentucky Power Company respectfully requests that Ms. Woods complaint be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line.

Mark R. Overstreet
STITES & HARBISON PLLC
421 West Main Street
P.O. Box 634
Frankfort, KY 40602-0634
Telephone: (502) 223-3477


COUNSEL FOR KENTUCKY POWER
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 18th day of May, 2009 upon:

Linda Lou Woods
16932 State Route 207
Argillite, Kentucky 41121-8783

Paul Craft
McBrayer, McGinnis, Leslie & Kirkland PLLC
P.O. Box 280
Greenup, Kentucky 41144-0280



Mark R. Overstreet

Total Amount Due \$ 239.97

On or Before 01/28/09

Send Inquiries To:
PO BOX 24401
CANTON, OH 44701-4401
D-K-533582514

21007 Amount Enclosed \$

Make Check Payable and Send To:
KENTUCKY POWER COMPANY
PO BOX 24410
CANTON OH 44701-4410

LINDA L WOODS
16932 STATE ROUTE 207
ARGILLITE, KY 41121-8783

0000239970000450040100000000

Please tear on dotted line and return top
portion with your payment

SERVICE AT:

Questions ?

Call:

Account Number

LINDA L WOODS
16932 STATE ROUTE 207
ARGILLITE, KY 41121-8783

1-888-932-4237

Pay by Phone

1-800-611-0964

Tariff 015

RESIDENTIAL

Disconnect After Date 01/28/09

D I S C O N N E C T N O T I C E

Your electric service account is currently past due. We have scheduled your
electric service for disconnection after 01/28/09.

PAST DUE AMOUNT \$ 239.97

In order to avoid disconnection, KENTUCKY POWER COMPANY requests that you pay
at least \$239.97. In the event that service is disconnected, a reconnection
charge will be required and a deposit may also be required.

You may mail your payment to us in the enclosed return envelope or select one
of several other payment options which KPCo offers. To obtain more
information about payment options, please contact one of our representatives
at (800)572-1113 hearing impaired: (888)572-4833 or visit us at
www.aepcustomer.com.

If payment has been made, please accept our thanks and disregard this notice.
See back of this notice for important customer rights and other information.
Receipt of a new bill will not change the requirements stated on this notice.

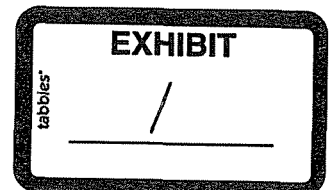
Mailing Date: 01/14/09

Community Action Agency

504 Main St.

Greenup, KY 41144

Telephone: (606) 473-9873



PO Box 24413
Canton, OH 44701-4413
Cycle 09 Route 58

Linda L. Woods
16932 State Route 207
Argillite, KY 41121-8783

January 29, 2009

Account Number:

Dear Linda L. Woods:

This letter confirms the arrangements you made for the payment of \$350.04. We have listed a summary of the payment agreement below:

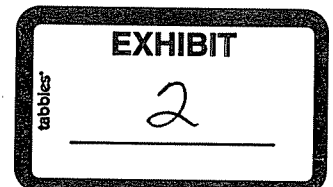
Agreement Amount Due	Due Date
\$50.00	February 2, 2009
\$100.01	February 26, 2009
\$100.01	March 27, 2009
\$100.02	April 28, 2009

These amounts will appear on your monthly electric service bill in addition to your current bill amount. Please remember that when you receive your regular monthly service bills in the future, you still must pay your past due amounts as stated in this letter.

If you do not comply with any of these terms, AEP may disconnect your electric service. If we disconnect service, the entire remaining past due balance plus a reconnection charge must be paid to have service restored. You also may be required to pay a security deposit before service is reconnected.

If you have any questions, contact AEP at 1-800-572-1113.

AEP IS AVAILABLE 24 HOURS A DAY 7 DAYS A WEEK



Total Amount Due \$ 470.77

On or Before 03/27/09

Send Inquiries To:
PO BOX 24401
CANTON, OH 44701-4401
D-K-533582514

12830 Amount Enclosed \$

Make Check Payable and Send To:
KENTUCKY POWER COMPANY
PO BOX 24410
CANTON OH 44701-4410

LINDA L WOODS
16932 STATE ROUTE 207
ARGILLITE, KY 41121-8783

0000470770000599070100000000

CYC 9

Please tear on dotted line and return top
portion with your payment

SERVICE AT:

Questions ?

Call:

Account Number

LINDA L WOODS
16932 STATE ROUTE 207
ARGILLITE, KY 41121-8783

1-888-932-4237

Pay by Phone

1-800-611-0964

Tariff 015

RESIDENTIAL

Disconnect After Date 03/27/09

D I S C O N N E C T N O T I C E

Your electric service account is currently past due. We have scheduled your electric service for disconnection after 03/27/09.

PAST DUE AMOUNT \$ 470.77

In order to avoid disconnection, KENTUCKY POWER COMPANY requests that you pay at least \$470.77. In the event that service is disconnected, a reconnection charge will be required and a deposit may also be required.

You may mail your payment to us in the enclosed return envelope or select one of several other payment options which KPCo offers. To obtain more information about payment options, please contact one of our representatives at (800)572-1113 hearing impaired: (888)572-4833 or visit us at www.aepcustomer.com.

If payment has been made, please accept our thanks and disregard this notice. See back of this notice for important customer rights and other information. Receipt of a new bill will not change the requirements stated on this notice.

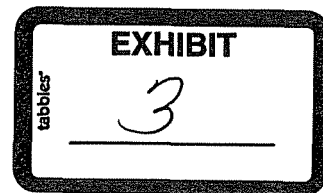
Mailing Date: 03/13/09

Community Action Agency

504 Main St.

Greenup, KY 41144

Telephone: (606) 473-9873



Total Amount Due \$ 136.93

On or Before 04/28/09

Send Inquiries To:
PO BOX 24401
CANTON, OH 44701-4401
D-K-533582514

9936 Amount Enclosed \$

Make Check Payable and Send To:
KENTUCKY POWER COMPANY
PO BOX 24410
CANTON OH 44701-4410

LINDA L WOODS
16932 STATE ROUTE 207
ARGILLITE, KY 41121-8783

00001369300002362901000000000000

035-740-316-9-0 CYC 9

Please tear on dotted line and return top
portion with your payment

SERVICE AT:

LINDA L WOODS
16932 STATE ROUTE 207
ARGILLITE, KY 41121-8783

Questions ?
Call: Account Number
1-888-932-4237

Pay by Phone
1-800-611-0964
Tariff 015
RESIDENTIAL

Disconnect After Date 04/28/09

D I S C O N N E C T N O T I C E

Your electric service account is currently past due. We have scheduled your electric service for disconnection after 04/28/09.

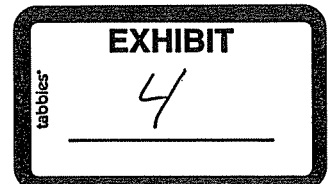
PAST DUE AMOUNT \$ 136.93

In order to avoid disconnection, KENTUCKY POWER COMPANY requests that you pay at least \$136.93. In the event that service is disconnected, a reconnection charge will be required and a deposit may also be required.

You may mail your payment to us in the enclosed return envelope or select one of several other payment options which KPCo offers. To obtain more information about payment options, please contact one of our representatives at (800)572-1113 hearing impaired: (888)572-4833 or visit us at www.aepcustomer.com.

If payment has been made, please accept our thanks and disregard this notice. See back of this notice for important customer rights and other information. Receipt of a new bill will not change the requirements stated on this notice.

Mailing Date: 04/14/09
Community Action Agency
504 Main St.
Greenup, KY 41144
Telephone: (606) 473-9873



Total Amount Due \$ 99.36

On or Before 05/28/09

Send Inquiries To:
PO BOX 24401
CANTON, OH 44701-4401
D-K-533582514

9093 Amount Enclosed \$

Make Check Payable and Send To:
KENTUCKY POWER COMPANY
PO BOX 24410
CANTON OH 44701-4410

LINDA L WOODS
16932 STATE ROUTE 207
ARGILLITE, KY 41121-8783

00000993600001902901000000000000

CYC 9

Please tear on dotted line and return cop
portion with your payment

SERVICE AT:

Questions ?

Account Number

LINDA L WOODS
16932 STATE ROUTE 207
ARGILLITE, KY 41121-8783

Call:
1-888-932-4237

Pay by Phone
1-800-611-0964
Tariff 015
RESIDENTIAL

Disconnect After Date 05/28/09

D I S C O N N E C T N O T I C E

Your electric service account is currently past due. We have scheduled your electric service for disconnection after 05/28/09.

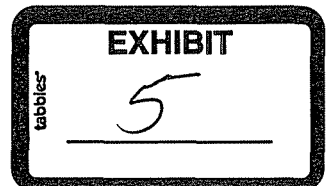
PAST DUE AMOUNT \$ 99.36

In order to avoid disconnection, KENTUCKY POWER COMPANY requests that you pay at least \$99.36. In the event that service is disconnected, a reconnection charge will be required and a deposit may also be required.

You may mail your payment to us in the enclosed return envelope or select one of several other payment options which KPCo offers. To obtain more information about payment options, please contact one of our representatives at (800)572-1113 hearing impaired: (888)572-4833 or visit us at www.aepcustomer.com.

If payment has been made, please accept our thanks and disregard this notice. See back of this notice for important customer rights and other information. Receipt of a new bill will not change the requirements stated on this notice.

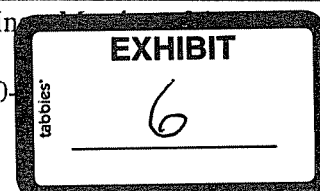
Mailing Date: 05/14/09
Community Action Agency
504 Main St.
Greenup, KY 41144
Telephone: (606) 473-9873



08-10626-jms James Ray Woods and Linda Lou Woods
Case type: bk **Chapter:** 7 **Asset:** No **Vol:** v **Chief Judge:** Joseph M Scott Jr
Date filed: 11/26/2008 **Date of last filing:** 03/26/2009
Debtor discharged: 03/24/2009 **Joint debtor discharged:** 03/24/2009
Date terminated: 03/24/2009

History

Doc. No.	Dates	Description	
--	<i>Filed & Entered</i> <i>Terminated.</i>	11/26/2008 03/24/2009	Internet Payment of Fee(s)
	<i>Docket Text</i> Receipt of filing fee for Chapter 7 Voluntary Petition - case upload(08-10626) [caseupld,1027u] (299.00). Receipt number 3450149, amount \$ 299.00. (U.S. Treasury)		
<u>1</u>	<i>Filed & Entered</i> <i>Terminated.</i>	11/26/2008 03/24/2009	Chapter 7 Voluntary Petition - case upload
	<i>Docket Text</i> Chapter 7 Voluntary Petition, Fee Amount \$299 filed by Paul E. Craft on behalf of James Ray Woods, Linda Lou Woods. Section 316 Incomplete Filing Date 1/12/2009 (Craft, Paul)		
<u>2</u>	<i>Filed & Entered</i> <i>Terminated.</i>	11/26/2008 03/24/2009	Certificate of Credit Counseling
	<i>Docket Text:</i> Certificate of Credit Counseling, filed by James Ray Woods. (Craft, Paul)		
<u>3</u>	<i>Filed & Entered</i> <i>Terminated.</i>	11/26/2008 03/24/2009	Certificate of Credit Counseling
	<i>Docket Text.</i> Certificate of Credit Counseling, filed by Linda Lou Woods. (Craft, Paul)		
<u>4</u>	<i>Filed & Entered</i> <i>Terminated.</i>	12/01/2008 03/24/2009	Meeting of Creditors Chapter 7 No Asset
	<i>Docket Text:</i> Meeting of Creditors 341(a) meeting to be held on 1/16/2009 at 02:20 PM at Ashland Courtroom. Last day to oppose discharge is 3/17/2009. Financial Management Course due:3/2/2009. (rah,)		
<u>5</u>	<i>Filed & Entered</i> <i>Terminated.</i>	12/01/2008 03/24/2009	Order to Debtor
	<i>Docket Text:</i> Chapter 7 Order to Debtor to Turn Over/Produce Documents. (rah,)		
<u>6</u>	<i>Filed & Entered</i> <i>Terminated.</i>	12/01/2008 03/24/2009	Notice Appointing Interim Trustee
	<i>Docket Text:</i> Notice of Appointment of Interim Trustee and Fixing of Bond. Pursuant to 11 U.S.C. Section 701, Phaedra Spradlin is appointed Interim Trustee in the above referenced matter and is hereby designated to preside at the meeting of creditors Pursuant to FRBP 2008, the Trustee will be deemed to have accepted this appointment unless it is rejected within five(5) days of receipt of this Notice. The Trustee's required bond is included under the approved existing general blanket bond The United States Trustee shall be notified immediately in the event the Trustee's funds on deposit for any asset case exceeds \$100,000. Unless creditors at the first meeting of creditors held pursuant to 11 U.S.C. Section 341(a) elect another trustee, the Interim Trustee appointed herein shall serve as Trustee without further appointment or qualification under the same bond. /s/ John L. Daugherty, Assistant U.S. Trustee (rah,)		
<u>7</u>	<i>Filed</i>	12/03/2008	BNC Certificate of Mailing



	<i>Entered</i> <i>Terminated.</i>	12/04/2008 03/24/2009	
	<i>Docket Text</i> BNC Certificate of Mailing - Meeting of Creditors Service Date 12/03/2008 (Related Doc # [4]) (Admin.)		
8	<i>Filed.</i> <i>Entered.</i> <i>Terminated.</i>	12/03/2008 12/04/2008 03/24/2009	BNC Certificate of Mailing
	<i>Docket Text</i> . BNC Certificate of Mailing Service Date 12/03/2008. (Related Doc # [5]) (Admin.)		
9	<i>Filed & Entered</i> <i>Terminated.</i>	12/06/2008 03/24/2009	Creditor Request for Notices
	<i>Docket Text</i> Creditor Request for Notices, filed on behalf of Recovery Management Systems Corporation. (Singh, Ramesh)		
10	<i>Filed & Entered</i> <i>Terminated.</i>	12/15/2008 03/24/2009	Certificate of Service re: Payment Advices
	<i>Docket Text</i> Certificate of Service re: Payment Advices, filed by James Ray Woods, Linda Lou Woods (Craft, Paul)		
--	<i>Filed & Entered.</i> <i>Terminated.</i>	12/19/2008 03/24/2009	Internet Payment of Fee(s)
	<i>Docket Text</i> Receipt of filing fee for Motion for Relief From Stay(08-10626-jms) [motion,mrlfsty] (150.00). Receipt number 3491301, amount \$ 150.00. (U.S. Treasury)		
11	<i>Filed & Entered.</i> <i>Terminated.</i>	12/19/2008 01/12/2009	Motion for Relief From Stay
	<i>Docket Text</i> Motion for Relief from Stay, filed by Ford Motor Credit Company LLC Fee Amount 150. Last day to file objections: 1/5/2009. (Attachments: # (1) Proposed Order) (Reynolds, Andrea)		
12	<i>Filed & Entered</i> <i>Terminated.</i>	01/05/2009 03/24/2009	Financial Management Course
	<i>Docket Text</i> . Financial Management Course, filed by James Ray Woods (RE: related document(s)[4] Meeting of Creditors Chapter 7 No Asset). (Craft, Paul)		
13	<i>Filed & Entered.</i> <i>Terminated.</i>	01/12/2009 03/24/2009	Order on Motion For Relief From Stay
	<i>Docket Text</i> Order GRANTING Motion For Relief From Stay, Ford Motor Credit Company, LLC, re: 2006 Ford F150 (Related Doc # [11]) (rah,)		
14	<i>Filed & Entered.</i> <i>Terminated.</i>	01/15/2009 03/24/2009	Certificate of Service
	<i>Docket Text</i> Certificate of Service (RE: related document(s)[13] Order on Motion For Relief From Stay). (Newman, Jessica)		
15	<i>Filed & Entered</i> <i>Terminated.</i>	01/19/2009 03/24/2009	Chapter 7 Trustee's Report of No Distribution
	<i>Docket Text</i> Trustee's Report of No Distribution from 341 Meeting Held on 1/16/2009 Trustee of this estate reports and certifies that the trustee has performed the duties required of a trustee under 11 U S C 704 and has concluded that there are no assets to administer for the benefit of creditors of this estate I have received no funds or property of the estate, and paid no monies on account of the estate. Wherefore, the trustee prays that this report be approved and the trustee be discharged from office. (Spradlin, Phaedra)		
--	<i>Filed & Entered</i> <i>Terminated.</i>	03/17/2009 03/24/2009	Internet Payment of Fee(s)
	<i>Docket Text</i> . Receipt of filing fee for Amended Schedules A-H, Matrix(08-10626-jms) [misc,amdschat] (26.00). Receipt number 3684503, amount \$ 26.00. (U.S. Treasury)		

16	<i>Filed & Entered Terminated.</i>	03/17/2009 03/24/2009	Amended Schedules A-H, Matix
<i>Docket Text.</i> Amended Schedules filed: Schedule F, Amended Matix. The purpose of the Amendment is to Add. Fee Amount \$26 Filed by James Ray Woods, Linda Lou Woods. (Craft, Paul)			
17	<i>Filed & Entered Terminated.</i>	03/24/2009 03/24/2009	Order Discharging Debtor(s)
<i>Docket Text.</i> Order of Discharge of Both Debtors (Chapter 7). (rah)			
18	<i>Filed & Entered.</i>	03/24/2009	Close Bankruptcy Case
<i>Docket Text</i> Final Decree, discharging Trustee, if applicable CASE CLOSED CC: Attorney for Debtor(s), Trustee (rah)			
19	<i>Filed Entered.</i>	03/26/2009 03/27/2009	BNC Certificate of Mailing - Order of Discharge
<i>Docket Text</i> BNC Certificate of Mailing - Order of Discharge Service Date 03/26/2009 (Related Doc # [17]) (Admin.)			

PACER Service Center			
Transaction Receipt			
05/07/2009 13:28:44			
PACER Login:	ae0122	Client Code:	
Description:	History/Documents	Search Criteria:	08-10626-jms Type: History Docket Text: DisplayDktText
Billable Pages:	2	Cost:	0 16

Total Amount Due \$ 599.07
Due Mar 27, Add \$6.42 After Apr 09

Send Inquiries To:
PO BOX 24401
CANTON, OH 44701-4401
R-K-533582514

12830 Amount Enclosed\$

Make Check Payable and Send To:
KENTUCKY POWER COMPANY
PO BOX 24410
CANTON OH 44701-4410

LINDA L WOODS
16932 STATE ROUTE 207
ARGILLITE, KY 41121-8783

00005990700006054901

CYC 9 58

Please tear on dotted line and return top
portion with your payment

SERVICE AT:

Questions About Bill
or Service, Call:
1-800-572-1113
Pay by Phone:
1-800-611-0964

Account Number

LINDA L WOODS
16932 STATE ROUTE 207
ARGILLITE, KY 41121-8783

Bill Date 03/11/09
Page 1 of 3

PREVIOUS CHARGES:

	Account Balance	Amount Due
Total Amount Due at Last Billing	\$ 314.99	
Payment 02/20/09 - Thank You	50.00 CR	
Late Payment Charge	5.75	
Remaining Payment Agreement Amount	200.03	
Previous Balance	\$ 470.77	\$ 470.77

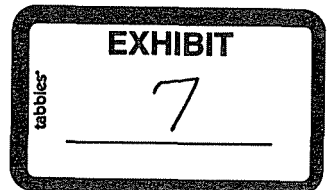
CURRENT KPCo CHARGES (1-800-572-1113): See *Deposit Warning* message
03/10/Tariff 015 - RESIDENTIAL SERVICE

Rate Billing	\$ 116.06	
Fuel Adj @ 0.0050002 Per KWH	8.51	
DSM Adj @ 0.0006440 Per KWH	1.10	
Residential HEAP @ \$0.10	.10	
Net Merger Cr @ 0.0007300- Per KWH	1.24 CR	
Capacity Charge @ 0.0008240 Per KWH	1.40	
Environmental Adj 1.8841000%	2.37	
Current Electric Due	\$ 128.30	\$ 128.30
Total Amount Due		\$ 599.07
Due Mar 27, Add \$6.42 After Apr 09		

\$4.42 is your average daily cost for current electric service 035-740-316-90

USAGE:

Service Period		Meter Reading			
Meter Number	From To	Prev	CD Pres	CD Multiplier	Metered Usage
533582514	02/09/0903/10/09	38506 R	40208 R	1.0000	1702 KWH
CD - Read Code =Rf Read		29	Billing	Next Scheduled Read Date	04/09/09
Month Usage	Month Usage	Month Usage	Month Usage	Month Usage	Month Usage
Mar 08	May 08	Jul 08	Sep 08	Nov 08	Jan 09 2,606
Apr 08	Jun 08	Aug 08	Oct 08	Dec 08 1,605	Feb 09 2,154
Average Monthly Usage: 2121 KWH			Total Usage (Past 12 Months): 6365 KWH		



United States Bankruptcy Court
Eastern District of Kentucky

In re James Ray Woods & Linda Lou Woods
Debtor(s)

Case No. 08-10626
Chapter 7

AMENDMENT TO SCHEDULES

Comes the Debtor in person and makes application for leave to amend their schedules and states that through inadvertence and error they failed to list in their schedules the following:

Added Creditors: AEP CPPA
PO Box 13447
Roanoke, VA 24034

We, James & Linda Woods, the petitioners named in the foregoing amendment, certify under penalty of perjury that the foregoing is true and correct.

Executed on March 17, 2009

/s/ James Ray Woods
James Ray Woods
Debtor

/s/ Linda Lou Woods
Linda Lou Woods
Debtor

CERTIFICATE OF SERVICE

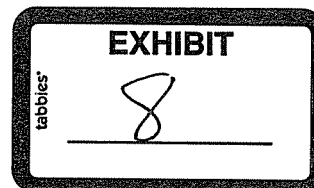
I certify that a copy of this amendment has been served upon the following parties affected thereby:

AEP CPPA
PO Box 13447
Roanoke, VA 24034

Hon. Phaedra Spradlin
6325 Old Richmond Road
Lexington, KY 40515

This the 17th day of March, 2009

/s/ Paul E. Craft
Paul E. Craft
Petitioner/Attorney



B6F (Official Form 6F) (12/07)

In re James Ray Woods,
Linda Lou Woods

Case No. 08-10626

Debtors

**AMENDED
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	Husband, Wife, Joint, or Community				CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
	C O D E B T O R	H	W	J C				
Account No. xxx-xxx-x16-9-0								
AEP CPPA PO Box 13447 Roanoke, VA 24034		W						599.00
Account No.								
Account No.								
Account No.								
Subtotal (Total of this page)								599.00
Total (Report on Summary of Schedules)								599.00

0 continuation sheets attached

United States Bankruptcy Court
Eastern District of Kentucky

In re James Ray Woods
Linda Lou Woods

Debtor(s)

Case No 08-10626
Chapter 7

VERIFICATION OF MAILING LIST MATRIX - AMENDED

I, James Ray Woods and Linda Lou Woods, the petitioner(s) in the above-styled bankruptcy action, declare under penalty of perjury that the attached mailing list matrix of creditors and other parties in interest consisting of 1 page(s) is true and correct and complete, to the best of my (our) knowledge.

Date: March 17, 2009

/s/ James Ray Woods
James Ray Woods
Signature of Debtor

Date: March 17, 2009

/s/ Linda Lou Woods
Linda Lou Woods
Signature of Debtor

I, Paul E. Craft, counsel for the petitioner(s) in the above-styled bankruptcy action, declare that the attached Master Address List consisting of 1 page(s) has been verified by comparison to Schedules D through H to be complete, to the best of my knowledge. I further declare that the attached Master Address List can be relied upon by the Clerk of Court to provide notice to all creditors and parties in interest as related to me by the debtor(s) in the above-styled bankruptcy action until such time as any amendments may be made.

Date: March 17, 2009

/s/ Paul E. Craft
Signature of Attorney
Paul E. Craft
McBrayer McGinnis Leslie & Kirkland
PO Box 280
Greenup, KY 41144
606-473-7303

AEP CPPA
PO Box 13447
Roanoke VA 24034

**United States Bankruptcy Court
Eastern District of Kentucky**

In re James Ray Woods
Linda Lou Woods Debtor(s) Case No. 08-10626
Chapter 7

**AMENDED
DECLARATION CONCERNING DEBTOR'S SCHEDULES**

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing document(s), consisting of 4 page(s), and that they are true and correct to the best of my knowledge, information, and belief.

Date March 17, 2009 Signature /s/ James Ray Woods
James Ray Woods
Debtor

Date March 17, 2009 Signature /s/ Linda Lou Woods
Linda Lou Woods
Joint Debtor

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.

APPENDIX

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144 B.R. 419, *; 1992 Bankr. LEXIS 1347, **

IN RE: TINA MARIE HICKS

CASE NO.: 92-50256S CHAPTER 7

UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF ARKANSAS,
WESTERN DIVISION

144 B.R. 419; 1992 Bankr. LEXIS 1347

August 18, 1992, Decided
August 21, 1992, Filed and Entered

COUNSEL: **[**1]** Michael Redden, #8 Shackelford Plaza, Ste. 207, Little Rock, AR 72211,
Atty for the Debtor.

Walter M. Dickinson, Trustee, 3101 Hinson Rd., Little Rock, AR 72212.

JUDGES: SCOTT

OPINION BY: MARY DAVIES SCOTT

OPINION

[*420] ORDER DENYING MOTION TO ADD CREDITORS

THIS CAUSE is before the Court upon the debtor's Motion to Add Creditors, filed on August 7, 1992. The salient facts are as follows. The debtor filed a voluntary chapter 7 petition in bankruptcy on May 14, 1992. After the filing of the petition the debtor acquired additional debts, specifically medical bills, which she seeks to have added to her list of creditors in order that the medical bills may be discharged.

The Bankruptcy Code provides in pertinent part:

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts *that arose before the date of the order for relief* under this chapter. * * *

11 U.S.C. § 727(b)(emphasis added). Upon the filing of the petition in bankruptcy under chapter 7, the Order for relief is entered and all property and rights to property are vested in the trustee. 11 U.S.C. §§ 301, 541. The trustee is then charged with distributing the assets **[**2]** of the estate to the creditors in existence on the date the order for relief is entered. The date of the filing is the crucial date for determining what assets are in the estate, what creditors will be paid from those assets, and what debts will be discharged in the proceeding. Debts incurred after the date of the filing of the chapter 7 petition, although they may appear on a list of creditors, are not discharged. See generally *In re Clement*, 136 Bankr. 557 (Bankr. C.D. Cal. 1992). Accordingly, there is no basis for adding the creditors to debtor's chapter 7 bankruptcy. ¹

FOOTNOTES

¹ The only effect of adding the creditors is one of cost: both the debtor and the Court would incur additional costs of notifying the creditors of particular actions taken in the course of the bankruptcy.

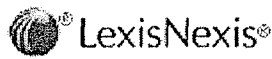
ORDERED that the Motion to Add Creditors, filed by the debtor on August 7, 1992, is DENIED.

IT IS SO ORDERED.

THE HONORABLE MARY DAVIES SCOTT

UNITED STATES BANKRUPTCY JUDGE

DATED: 8-18-92



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*266 B.R. 301, *; 2001 Bankr. LEXIS 1116, **;
Bankr. L. Rep. (CCH) P78,503*

In re PAULINE CLARKE, Debtor. PAULINE CLARKE, Plaintiff, v. RODERICK R. PAIGE, Secretary
1 United States Department of Education, Defendant.

1 Effective January 20, 2001, Dr. Roderick R. Paige became the Secretary of the Department of Education and is automatically substituted as the named defendant in place of the original defendant, Richard Riley, pursuant to Federal Rule of Civil Procedure 25(d)(1), incorporated by Federal Rule of Bankruptcy Procedure 7025.

Chapter 7, Bankruptcy No. 99-30654DWS, Adversary No. 00-911

UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

266 B.R. 301; 2001 Bankr. LEXIS 1116; Bankr. L. Rep. (CCH) P78,503

August 21, 2001, Decided

DISPOSITION: **[**1]** Motion GRANTED.

CASE SUMMARY

PROCEDURAL POSTURE: After debtor received her Chapter 7 discharge and the case was closed, she entered into a consolidated student education loan with creditor, to pay off pre-petition student loans. She reopened her bankruptcy and filed an adversary action to determine dischargeability of the loan under 11 U.S.C.S. § 523(a)(8). Creditor moved for summary judgment, arguing the post-petition consolidation created a new debt not subject to discharge.

OVERVIEW: The court noted the original loans were not discharged in the debtor's bankruptcy as she had not filed an adversary action to determine dischargeability. Under 11 U.S.C.S. § 1078-3(e), consolidated loans were considered new loans. Under 11 U.S.C.S. § 1078-3(b)(1)(D), proceeds of a consolidation loan had to pay off the original loans. Thus, the court held federal consolidation student loans were new agreements which discharged the liabilities of the old loans and created their own obligations. The debtor argued that Fed. R. Bankr. P. 4007 allowed her to seek a dischargeability determination at any time, and that if the original loans could be discharged, the consolidation loan was an invalid reaffirmation since none of the 11 U.S.C.S. § 524(c) conditions of reaffirmation were observed. The court held the original loans were and remained nondischargeable, as a matter of law, until the debtor sought and received a contrary determination. The reaffirmation argument failed. Section 524(c) only placed reaffirmation requirements upon agreements as to dischargeable debts. The original loans were nondischargeable as a matter of law when the debtor entered into the consolidation loan.

OUTCOME: The creditor's motion for summary judgment was granted.

CORE TERMS: consolidation, educational, nondischargeable, dischargeability, post-petition, reaffirmation, discharged, summary judgment, dischargeable, self-effectuating, matter of law, nondischargeability, consolidated, loan program, undue hardship, bankruptcy case, student loans, fresh start, citations omitted, insured, holder, dischargeable debt, deposition testimony, general policy, governmental unit, unauthenticated, presumptively, automatically, pre-petition, authenticity


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[Civil Procedure](#) > [Summary Judgment](#) > [Supporting Materials](#) > [General Overview](#) 

HN1 ↓ As is true with other material introduced on a summary judgment motion, uncertified or otherwise inadmissible documents may be considered by the court if not challenged. [More Like This Headnote](#)


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[Civil Procedure](#) > [Summary Judgment](#) > [Standards](#) > [Genuine Disputes](#) 

[Civil Procedure](#) > [Summary Judgment](#) > [Standards](#) > [Materiality](#) 


HN2 ↓ Summary judgment is proper where the pleadings, depositions, answers to interrogatories and admissions on file, and affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. [Fed. R. Civ. P. 56\(c\)](#). [More Like This Headnote](#)

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HN3 ↓ [Fed. R. Civ. P. 56](#) is incorporated into bankruptcy adversary cases by [Fed. R. Bankr. P. 7056](#). [More Like This Headnote](#)


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[Civil Procedure](#) > [Judgments](#) > [Relief From Judgment](#) > [General Overview](#) 


HN4 ↓ See [11 U.S.C.S. § 727\(b\)](#).

[Bankruptcy Law](#) > [Case Administration](#) > [Administrative Powers](#) > [Postpetition Credit](#) 


[Bankruptcy Law](#) > [Case Administration](#) > [Commencement](#) > [Voluntary Cases](#) > [Order for Relief](#) 

[Civil Procedure](#) > [Judgments](#) > [Relief From Judgment](#) > [General Overview](#) 


HN5 ↓ The commencement of a voluntary case under Chapter 7, by the filing of a petition, constitutes an order for relief. [11 U.S.C.S. § 301](#). Thus, under [11 U.S.C.S. § 727\(b\)](#), debts incurred post-petition are generally nondischargeable. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Bankruptcy Law](#) > [Discharge & Dischargeability](#) > [Nondischarge of Individual Debts](#) > [General Overview](#) 

HN6 ↓ Not all pre-petition debts are dischargeable. Congress has made a decision to exclude certain obligations from the general policy of discharge where the public policy at issue outweighs the debtor's need for a fresh start. [11 U.S.C.S. § 523](#). [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)



[Bankruptcy Law](#) > [Discharge & Dischargeability](#) > [Nondischarge of Individual Debts](#) > [General Overview](#) 



HN7 ↓ See [11 U.S.C.S. § 523\(a\)\(8\)](#).



[Bankruptcy Law](#) > [Discharge & Dischargeability](#) > [Nondischarge of Individual Debts](#) > [Student Loans](#) 




HN8 ↓ Under [11 U.S.C.S. § 523\(a\)\(8\)](#), educational loan debt is one of those obligations




that Congress has decided to make generally nondischargeable, absent a showing of undue hardship. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)



[Bankruptcy Law](#) > [Discharge & Dischargeability](#) > [Nondischarge of Individual Debts](#) > [Student Loans](#) 
HN9  Congress has placed the burden upon the debtor, not the creditor, to bring an action to dispute the nondischargeability of an educational loan, for such loans are nondischargeable by operation of law until the debtor seeks and receives a determination to the contrary. [More Like This Headnote](#)



[Bankruptcy Law](#) > [Discharge & Dischargeability](#) > [Nondischarge of Individual Debts](#) > [General Overview](#) 
HN10  The term "self-effectuating" better describes the operation of [11 U.S.C.S. § 523\(a\)\(8\)](#) inasmuch as [11 U.S.C.S. § 523\(a\)](#) is entitled Exceptions to Discharge, and [11 U.S.C.S. § 523\(a\)\(8\)](#) excepts a debt from the discharge without the need for any further action by a creditor. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)




[Bankruptcy Law](#) > [Discharge & Dischargeability](#) > [Nondischarge of Individual Debts](#) > [Automatic Discharge & Determinations](#) 
HN11  A complaint to obtain a determination of the dischargeability of a debt, other than under [11 U.S.C.S. § 523\(c\)](#), may be filed at any time. Fed. R. Bankr. P. [4007\(b\)](#). [More Like This Headnote](#)



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[Governments](#) > [Legislation](#) > [Statutes of Limitations](#) > [Time Limitations](#) 
HN12  [11 U.S.C.S. § 523\(a\)\(8\)](#) does not fall within the ambit of [11 U.S.C.S. § 523\(c\)](#) and, unlike the [§ 523\(c\)](#) debts which are rendered discharged if no action is taken by a creditor within the proscribed period, requires no action by the creditor as such debts are presumptively nondischargeable. However, that consequence may be altered by a determination of dischargeability if sought by the debtor "at any time," even after the bankruptcy case is completely administered and closed. [More Like This Headnote](#)


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[Education Law](#) > [Departments of Education](#) > [U.S. Department of Education](#) > [Authority](#) 
HN13  The consolidation of educational loans is governed by the Higher Education Act. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Education Law](#) > [Departments of Education](#) > [U.S. Department of Education](#) > [Authority](#) 
HN14  See [11 U.S.C.S. § 1078-3\(e\)](#).



[Education Law](#) > [Departments of Education](#) > [U.S. Department of Education](#) > [Authority](#) 
HN15  The Higher Education Act (Act) requires that lenders under the Act enter into agreements with the Secretary of Education or a guarantee agency providing, among other things, that the proceeds of each consolidation loan will be paid by the lender to the holder or holders of the loans so selected to discharge the liability on such loans. [11 U.S.C.S. § 1078-3\(b\)\(1\)\(D\)](#). [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Education Law](#) > [Administration & Operation](#) > [Student Financial Aid](#) > [Debt Collection](#) 
[Education Law](#) > [Departments of Education](#) > [U.S. Department of Education](#) > [Authority](#) 
HN16  Federal consolidation student loans are new agreements which discharge the liabilities of the old loans and create their own obligations. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Bankruptcy Law](#) > [Discharge & Dischargeability](#) > [Effects of Discharge](#) > [Hearings & Reaffirmation](#) 
[Contracts Law](#) > [Debtor & Creditor Relations](#) 

[Education Law](#) > [Departments of Education](#) > [U.S. Department of Education](#) > [Authority](#) 


HN17  The provisions of the Higher Education Act are subject to the Bankruptcy Code's protections regarding the reaffirmation of dischargeable debt. [11 U.S.C.S. § 524 \(c\)](#). [More Like This Headnote](#)

[Bankruptcy Law](#) > [Discharge & Dischargeability](#) > [Effects of Discharge](#) > [Hearings & Reaffirmation](#) 
[Contracts Law](#) > [Debtor & Creditor Relations](#) 


[Education Law](#) > [Administration & Operation](#) > [Student Financial Aid](#) > [Debt Collection](#) 

HN18  The Secretary of Education is not free to enter into a consolidated student loan agreement with a debtor if the loan to be consolidated or refinanced has been determined to be dischargeable unless the reaffirmation requirements of [11 U.S.C.S. § 524](#) have been satisfied. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Bankruptcy Law](#) > [Discharge & Dischargeability](#) > [Effects of Discharge](#) > [Hearings & Reaffirmation](#) 


HN19  See [11 U.S.C.S. § 524\(c\)](#).

[Bankruptcy Law](#) > [Discharge & Dischargeability](#) > [Nondischarge of Individual Debts](#) > [Student Loans](#) 

HN20  An educational loan is and remains nondischargeable in bankruptcy, as a matter of law, until a debtor seeks and receives a determination to the contrary. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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[Bankruptcy Law](#) > [Discharge & Dischargeability](#) > [Nondischarge of Individual Debts](#) > [General Overview](#) 

HN21  By its own terms, [11 U.S.C.S. § 524\(c\)](#) only places reaffirmation requirements upon agreements, the consideration for which, in whole or in part, is based on a debt that is dischargeable. [More Like This Headnote](#)

COUNSEL: COUNSEL FOR DEBTOR/PLAINTIFF: Henry J. Sommer, Esquire, CBAP, Philadelphia, PA.

COUNSEL FOR DEFENDANT: Virginia R. Powell, Esquire, Asst. U.S. Attorney, Philadelphia, PA.

JUDGES: DIANE WEISS SIGMUND, United States Bankruptcy Judge.

OPINION BY: DIANE WEISS SIGMUND

OPINION

[*304] OPINION

BY: DIANE WEISS SIGMUND, United States Bankruptcy Judge

Before the Court is the Motion of Dr. Roderick R. Paige, the Secretary of the United States Department of Education (the "Secretary"), for Summary Judgment (the "Motion") in response to the Debtor's Complaint to Determine Dischargeability of Student Loan pursuant to [11 U.S.C. § 523\(a\)\(8\)](#). The issue before the Court is whether the Debtor's education loan

debt, consolidated post-petition under a federal consolidation loan program, is dischargeable under 11 U.S.C. § 523(a)(8). For the reasons that follow, the Court finds that it is nondischargeable as a matter of law and that summary judgment must be entered in favor of the Secretary and against the Debtor.

BACKGROUND

The facts of this case are not in dispute. The Debtor filed a voluntary petition for bankruptcy **[**2]** under Chapter 7 on August 20, 1999 (the "Petition"). ² On December 1, 1999, this Court entered an Order granting the Debtor a discharge under 11 U.S.C. § 727, and the bankruptcy case was closed on December 10, 1999.

FOOTNOTES

² I shall take judicial notice of the docket entries in this case. Fed.R.Evid. 201, incorporated in these proceedings by Fed.R.Bankr.P. 9017. See Maritime Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1200 n.3 (3d Cir. 1991); Levine v. Egidi, 1993 U.S. Dist. LEXIS 2886, 1993 WL 69146, at *2 (N.D. Ill. 1993); In re Paolino, 1991 Bankr. LEXIS 2203, *41-42 n.19, 1991 WL 284107, at *12 n. 19 (Bankr. E.D. Pa. 1991); see generally In re Indian Palms Associates, Ltd., 61 F.3d 197 (3d Cir. 1995).

On or about June 22, 2000 the Debtor received a Federal Direct Consolidation Loan under the William D. Ford Direct Loan Program (the "Consolidation Loan"). Debtor's Deposition Testimony given April 2, 2001 ("Debtor's Dep.") at 45; Federal Direct Consolidation Loan Application and **[**3]** Promissory Note, Ex. B-1 to the Motion. The purpose of the Consolidation Loan was to pay off two outstanding student loans owed by the Debtor to the Department of Education (the "Original Loans"). Debtor's Dep. at 47; Ex. B-1 to the Motion. The Original Loans were not discharged in her bankruptcy case as no adversary action had been instituted by the Debtor to make a determination as to dischargeability. ³ The Debtor currently owes approximately \$ 6000 on the Consolidation Loan and is in default of her payment obligations. Debtor's Dep. at 47; Ex. D. to the Motion. ⁴

FOOTNOTES

³ Although both parties appear to assume that the Original Loans are pre-petition debt, Secretary's Memorandum in Support of Motion ("Secy.'s Mem.") at 2; Debtor's Memorandum in Response to Motion at 1, neither the record evidence nor even the allegations in the Complaint appear to establish this fact. I accept the parties' assumption as contained in their briefs as the premise upon which this dispute is founded. Indeed if I did not, my inquiry would end here. As post-petition debts, the Original Loans would be nondischargeable as a matter of law. 11 U.S.C. § 727(b). See *infra* Discussion, § II. **[**4]**

⁴ The Debtor's Borrow History and Activity Report, attached as Exhibit "D" to the Motion, is unauthenticated by either deposition testimony or affidavit. However, "~~HN1~~" as is true with other material introduced on a summary judgment motion, uncertified or otherwise inadmissible documents may be considered by the court if not challenged." 10A Charles A. Wright, Arthur R. Miller & Mary K. Kane, Federal Practice and Procedure § 2722, at 384 (1998). Accord Johnson v. United States Postal Service, 64 F.3d 233, 237 (6th Cir. 1995) (ruling that the "failure to object to evidentiary material submitted in support of a summary judgment motion constitutes a waiver of those objections."); H. Sand & Co., Inc. v. Airtemp Corporation, 934 F.2d 450, 454-55 (2d Cir. 1991) (Rule 56 does not require parties to authenticate documents "where appellee did not challenge the authenticity of the documents in the district court."); Dautremont v. Broadlawns Hospital,

827 F.2d 291, 294-95 (8th Cir. 1987) (affirming summary judgment where appellant failed to object in district court to its consideration of documents not in compliance with Rule 56 and failed to demonstrate that district court's consideration of documents constituted reversible error); Giovacchini v. Perrine (In re Giovacchini), 1995 U.S. Dist. LEXIS 2230, *6 n.1, 1995 WL 80102, at *3 n.1 (E.D. Pa. Feb. 27, 1995) (citing Federal Practice and Procedure § 2722) (holding that unauthenticated medical reports would be considered in ruling on motion for summary judgment since no objection was raised thereto). Here, the Debtor does not challenge the authenticity or accuracy of the Activity Report, nor the fact that she is in default on the Consolidation Loan.

[5]** The Debtor moved to reopen this case for the purpose of seeking an adjudication **[*305]** of the dischargeability of her educational loans under the hardship exception of 11 U.S.C. § 523(a)(8), and the case was reopened on November 27, 2000. On December 4, 2000 the Debtor filed the instant adversary action. In response to the Complaint, the Secretary raises as an affirmative defense the issue that is presented in this Motion, i.e., whether the post-petition consolidation of the educational loans created a new obligation not subject to discharge.

DISCUSSION

I.

^{HN2} Summary judgment is proper where "the pleadings, depositions, answers to interrogatories and admissions on file, and affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). ⁵ See also Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Here, the facts are not in dispute. Therefore, the issue before the Court is solely a legal one readily addressed by this summary proceeding.

FOOTNOTES

⁵ ^{HN3} Federal Rule of Civil Procedure 56 is incorporated by Federal Rule of Bankruptcy Procedure 7056.

[6] II.**

The general policy behind the Bankruptcy Code is to provide a "fresh start" for insolvent debtors so that they may "enjoy 'a new opportunity in life with a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.'" Santa Fe Medical Services, Inc. v. Segal (In re Segal), 57 F.3d 342, 346 (3d Cir. 1995) (quoting Grogan v. Garner, 498 U.S. 279, 286, 111 S. Ct. 654, 659, 112 L. Ed. 2d 755 (1991)) (emphasis added). To this end, ^{HN4} section 727 states in relevant part: "Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter." 11 U.S.C. § 727(b) (emphasis added). ^{HN5} The commencement of a voluntary case under Chapter 7, by the filing of a petition, constitutes an "order for relief." 11 U.S.C. § 301. Thus, debts incurred post-petition, are generally nondischargeable. See generally In re Hicks 144 B.R. 419 (Bankr. E.D. Ark. 1992).

This does ^{HN6} not mean, conversely, that all pre-petition debts are dischargeable. Congress **[**7]** has made a decision to "exclude certain obligations from the general policy of discharge where the public policy at issue outweighs the debtor's need for a fresh start."

Segal, 57 F.3d at 346. Therefore, it enacted § 523 of the Bankruptcy Code, "Exceptions to discharge," which provides in relevant part: **[*306]**

HN7 (a) A discharge under section 727, 1141 or 1228(a), 1228(b), or 1328(b) 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 a 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.

HN8 11 U.S.C. § 523(a)(8). Thus, educational loan debt is one of those obligations that Congress has decided to make generally nondischargeable, absent a showing of "undue hardship." ⁶

FOOTNOTES

⁶ Indeed, the evolution of § 523(a)(8) evidences a clear Congressional intent to remedy abuses in the educational loan system by restricting the ability of debtors to discharge educational loans. Segal, 57 F.3d at 348. That section has been repeatedly modified to progressively limit the instances in which educational loans can be discharged by both expanding the meaning of "educational loans," *id.* at 346-47 (discussing amendments through 1990), and by narrowing the exceptions to this general rule of nondischargeability. This was most recently seen in the Higher Education Amendments of 1998, which eliminated entirely the prior exception for loans which became due more than seven years before the date of the filing of the Petition, leaving only the "undue hardship" exception. Pub. L. No. 105-244, § 971, 112 Stat. 1581, 1837 (1998) (*repealing 11 U.S.C. § 523(a)(8)(A)*). "Metaphorically speaking, the modification process not only expanded subsection (8) to catch more fish in its nondischargeability net, but has also narrowed the subsection to keep them from escaping." Segal, 57 F.3d at 349. Debtor's position that educational loans that have been consolidated post-petition may be found dischargeable under § 523(a)(8) so as to render the post-petition replacement loan an invalid reaffirmation is an expansion of the ability of debtors to discharge educational loans which runs counter to the above history. Given the decision herein which is founded solely on statutory interpretation, I need not address the obvious implications for the student loan program if Debtor's position was adopted.

[8]** Significantly, *HN9* Congress has placed the burden upon the debtor, not the creditor, to bring an action to dispute the nondischargeability of an educational loan, for such loans are "nondischargeable by operation of law until the debtor seeks and receives a determination to the contrary." *Lester E. Cox Medical Centers v. Penn (In re Penn)*, 262 B.R. 788, 789 (Bankr. W.D. Mo. 2001). *Accord Andersen v. UNIPAC-NEBHELP (In re Andersoe)*, 179 F.3d 1253, 1258 (10th Cir. 1999) (educational loans are presumptively nondischargeable); *Kahl v. Texas Higher Education Coordinating Bd. (In re Kahl)*, 240 B.R. 524, 530 (Bankr. E.D. Pa. 1999) (Section 523 is not self-effectuating. Rather, it requires the debtor to bring an adversary proceeding to determine whether a student loan debt is dischargeable under that provision); *Stout v. United States Dept. of Educ. (In re Stout)*, 231

B.R. 313, 315 (Bankr. W.D. Mo. 1999) (same). See also Senate Report No. 95-989, 95th Cong.2d Sess. 77- 79 (1978), U.S.Code Cong. & Admin.News 1978, pp. 5787, 5862-5865) ("[Section 523(a)(8)]'is intended to be self-executing"). As noted by one court:

This **[**9]** characteristic of § 523(a)(8) has been described as both self-effectuating/executing, and not self-effectuating/executing. [citations omitted] The confusion is understandable considering that the characterization of § 523(a)(8) will depend on the perspective from which it is viewed. Viewed from the creditor's perspective, § 523(a)(8) appears to be self-effectuating because the **[*307]** debt will automatically be nondischargeable without further action being taken. Viewed from the debtor's perspective, though, he or she must institute a dischargeability proceeding in order to get the desired relief; thus, the statute appears to be non self-effectuating.

Janc v. Coordinating Board for Higher Education (In re Janc), 251 B.R. 525, 529-30 n.6 (Bankr. W.D. Mo. 2000) (citations omitted). I agree with the Janc court that "HN10 the term 'self-effectuating' better describes the operation of the statute, inasmuch as § 523(a) is entitled 'Exceptions to Discharge,' and § 523(a)(8) excepts a debt from the discharge without the need for any further action by a creditor." Id.

"HN11 A complaint [to obtain a determination of the dischargeability of a debt] other than under § **[**10]** 523(c) may be filed at any time." Fed. R. Bankr. P. 4007(b). HN12 Section 523(a)(8) does not fall within the ambit of § 523(c) and, unlike the § 523(c) debts which are rendered discharged if no action is taken by a creditor within the proscribed period, requires no action by the creditor as such debts are presumptively nondischargeable. 7 However, that consequence may be altered by a determination of dischargeability if sought by the debtor "at any time," even after the bankruptcy case is completely administered and closed. *Saler v. Saler (In re Saler)*, 205 B.R. 737, 747 (Bankr. E.D. Pa. 1997). It is this procedural vehicle that has been employed by the Debtor here.

FOOTNOTES

7 Section 523(c) carves out debts of the kind described in paragraphs (2)[money obtained by false pretenses or fraud], (4)[fraud or defalcation while acting in a fiduciary capacity], (6)[willful and malicious injury to another entity or to property of another entity], and (15)[certain divorce and separation obligations] of subsection (a) and provides that these debts, notwithstanding their nondischargeability under § 523(a), will be automatically discharged unless the creditor seeks a determination of nondischargeability prior to the bar date set forth in Bankruptcy Rule 4007(c) for Chapter 7, 11 or 12 cases or (d) for Chapter 13 cases.

[11]** The ability of the Debtor to avail herself of this statutory right requires me to focus on the precise loans that are sought to be discharged. It is undisputed that after the Debtor received her discharge, and without seeking a determination of the dischargeability of the Original Loans, the Debtor sought and obtained the Consolidation Loan. HN13 The consolidation of educational loans is governed by the Higher Education Act (the "HEA"), which states in relevant part: HN14 "Loans made under this section which are insured by the Secretary shall be considered to be new loans made to students for the purpose of § 424(a) [20 U.S.C. § 1074(a)] of this title." 11 U.S.C. § 1078-3(e) (emphasis added). Further, HN15 it requires that lenders under the Act enter into agreements with the Secretary of Education or a guarantee agency providing, among other things, "that the proceeds of each consolidation loan will be paid by the lender to the holder or holders of the loans so selected to discharge the liability on such loans." 11 U.S.C. § 1078-3(b)(1)(D) (emphasis added). The

plain language of these sections thus makes it clear **[**12]** that ^{HN16} federal consolidation loans are new agreements which discharge the liabilities of the old loans and create their own obligations. See also Hiatt v. Indiana State Student Assistance Comm'n, 36 F.3d 21, 24 (7th Cir. 1994) ("When a borrower undertakes a consolidation loan, the original loan is repaid in full and the debt is discharged"); Martin v. Great Lakes Higher Educ. Corp. (In re Martin), 137 B.R. 770, 772 (Bankr. W.D. Mo. 1992) ("The statutory language is clear that a consolidated loan is considered a new loan for educational purposes under the federally insured student loan program. . . . **[*308]** and, as expressly provided by 20 U.S.C. § 1078-3(b)(1)(D), the old notes were discharged"). ⁸

FOOTNOTES

⁸ While all of the case law that my research revealed regarding the application of consolidation loans to § 523(a)(8) discusses the issue in the context of the now defunct seven year exception, their holding, that the consolidation loan extinguishes the original loan, is still valid. Moreover, while the Third Circuit has not yet addressed this issue, it has acknowledged this majority view. Segal, 57 F.3d at 349 n.8.

[13]** ^{HN17}

The provisions of HEA are subject to the Bankruptcy Code's protections regarding the reaffirmation of dischargeable debt. 11 U.S.C. § 524(c). The purpose of § 524(c) is "to 'protect debtors from compromising their fresh start by making unwise agreements to repay dischargeable debts' ... [and] to avoid 'the danger that creditors may coerce debtors into undesirable reaffirmation agreements.'" In re Hovestadt, 193 B.R. 382, 386 (Bankr. D. Mass. 1996) (citation omitted). Accordingly, ^{HN18} the Secretary is not free to enter into a consolidated loan agreement with a debtor if the loan to be consolidated or refinanced has been determined to be dischargeable unless the reaffirmation requirements of § 524 have been satisfied. ⁹ See cases cited in n.10 infra.

FOOTNOTES

⁹ This section states in relevant part: "^{HN19} an agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable . . . only if [certain reaffirmation requirements are met]." 11 U.S.C. § 524(c) (emphasis added).

[14]** III.

With this background, I now examine the arguments proffered by the parties. The Secretary views the Consolidation Loan as a straightforward post-petition debt which is nondischargeable pursuant to § 727(b). The Debtor, while not disputing the post-petition nature of the Consolidation Loan, argues that Bankruptcy Rule 4007 allows her to seek a determination of dischargeability of the Original Loans "at any time," a right she has now exercised. If this Court determines the debt arising under the Original Loans to be dischargeable, the Consolidation Loan would be an invalid reaffirmation since none of the § 524(c) conditions of reaffirmation were observed. Therefore, she argues that I must first examine the merits of her dischargeability action as to the Original Loans before even looking to the Consolidation Loan. Debtor's Memorandum In Response to Secretary's Motion ("Debtor's Mem.") at 2-4. Applying the principles discussed above, I must respectfully disagree with the Debtor's analysis.

The Debtor is correct regarding the lack of a time limit under Rule 4007(b) to determine the dischargeability of an educational loan, but she incorrectly assumes that the status of the **[**15]** Original Loans remains in limbo until she seeks such a dischargeability determination. Debtor's Mem. at 3 ("If [debtors] do not [seek a determination], there may simply be uncertainty regarding whether the loan is discharged"). Such uncertainty is precisely what Congress intended to dispel when it made § 523(a)(8) self-effectuating. ^{HN20} ¶ An educational loan is and remains nondischargeable, as a matter of law, until a debtor seeks and receives a determination to the contrary. See In re Penn, 262 B.R. at 789; Janc, 251 B.R. at 529-30. For this reason, the Debtor's reaffirmation argument must fail. ^{HN21} ¶ By its own terms, § 524(c) only places reaffirmation requirements upon agreements, "the consideration for which, in whole or in part, is based on a debt that is dischargeable." 11 U.S.C. § 524(c). Because the Original Loans were nondischargeable as a **[*309]** matter of law when the Debtor entered into the Consolidation Loan, § 524(c) is simply inapplicable to that transaction. ¹⁰

FOOTNOTES

¹⁰ For this reason, the cases cited by the Debtor, see Republic Bank of California, N.A. v. Getzoff (In re Getzoff), 180 B.R. 572 (BAP 9th Cir. 1995); Butler Consumer Discount Company v. Cain (In re Cain), 50 B.R. 388 (W.D. Pa. 1985); First Suburban National Bank v. Smith (In re Smith), 224 B.R. 388 (Bankr. N.D. Ill. 1998); In re Lowery, 187 B.R. 761 (Bankr. M.D. Fla. 1995); Lindale National Bank v. Artzt (In re Artzt), 145 B.R. 866 (Bankr. ED. Tex. 1992), all of which involve debts that were undisputably discharged in the bankruptcy, are simply inapposite.

[16]** It cannot be disputed that the Consolidation Loan extinguished the Original Loans. See, e.g., Hiatt, 36 F.3d at 24. Therefore, the only loan now in existence is the Consolidation Loan, a post-petition debt which is nondischargeable under 11 U.S.C. § 727(b). Nothing in § 523(a)(8) excepts post-petition education debt, even where it may place an undue hardship upon the debtor. The Secretary's position is correct, and summary judgment must be granted in his favor.

An Order consistent with this Opinion shall issue.

DIANE WEISS SIGMUND

United States Bankruptcy Judge

Dated: August 21, 2001

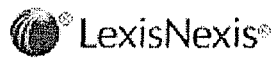
ORDER

AND NOW, this 21st day of August, 2001, upon consideration of the Motion for Summary Judgment of the Plaintiff, Dr. Roderick R. Paige, the Secretary of the United States Department of Education (the "Motion"), and for the reasons set forth in the accompanying Opinion, it is hereby **ORDERED** that:

1. The Motion is **GRANTED**;
2. Debtor's Federal Direct Consolidation Loan is nondischargeable pursuant to 11 U.S.C. § 727(b).
3. The Clerk of Court shall close this adversary case when this Order becomes **[**17]** final, 10 days from its entry on the docket.

DIANE WEISS SIGMUND

United States Bankruptcy Judge



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