

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In the Matter of

BARBARA MICHAUD,

Debtor

BARBARA MICHAUD,

Plaintiff

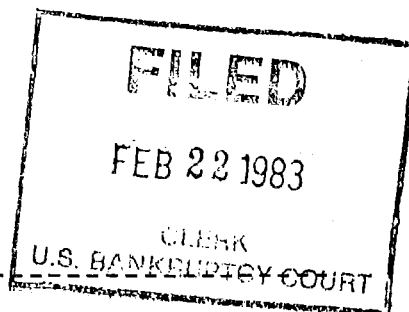
vs.

BANK OF MENOMONIE, LLOYD'S BANK
OF CALIFORNIA and WISCONSIN
HIGHER EDUCATION CORPORATION,
a Wisconsin non-stock corporation,
as assignee of Bank of Menomonie
and HIGHER EDUCATIONAL AIDS BOARD,

Defendants.

Bankruptcy No.
EF7-82-00900

Adversary No.
82-0202



FINDINGS OF FACT,
CONCLUSIONS OF LAW and ORDER

The above named debtor having filed a complaint for discharge of certain student loans described therein; and Wisconsin Higher Education Corporation, a Wisconsin non-stock corporation, assignee of Bank of Menomonie, and Higher Educational Aids Board having filed a motion to dismiss the complaint; and the matter having come on for hearing; Mart W. Swenson appearing for the plaintiff; Buffett, Dew, Blaney, Olson & Lasker by William H. Olson appearing for defendant, Wisconsin Higher Education Corporation; and the defendant, Lloyd's Bank of California, not having answered or appeared

herein and is totally in default; and the court having heard the witnesses and the arguments of counsel, and having considered the memorandums and briefs of the attorneys, the entire record and file herein, and being fully advised in the premises, FINDS:

1. That the debtor filed a voluntary Chapter 7 petition on May 25, 1982.

2. That the trustee has filed a no asset report herein.

3. That the assets of the debtor, all of which were determined to be exempt, consisted of household furniture of the value of \$1,200.00, books and pictures of the value of \$100.00, wearing apparel and jewelry of the value of \$300.00, old automobiles of the value of \$500.00, and a homestead interest of approximately \$7,900.00, which homestead has since been foreclosed and the debtor no longer occupies it or has possession of it. (Counsel advises she received \$600.00 out of the home.)

4. That at the time of the filing of the complaint the debtor was unemployed and a student at the University of Wisconsin-Stout. She was last employed as a librarian's aid at minimum wage about five or six years ago.

5. That debtor had secured debts of \$32,288.89, including the homestead real estate which was disposed of in

the foreclosure action; that she had unsecured debts of \$19,556.34.

6. That the schedules show the unsecured debts consist of student loans as follows:

Bank of Menomonie	\$12,500.00
Lloyd's Bank of California	3,379.37
University of Wisconsin-Stout	288.35

and other unsecured debts as follows:

Centex	700.00
Dunn County Electric Co-op	91.92
John Kosman Dairy	46.70
Mertle Werth Hospital	1,200.00
Red Cedar Clinic	700.00
Lehman Drugs	140.00
Solberg, Steans & Schofield	450.00
Winkley Orthopedic Lab	60.00

7. That her husband who was a railroad employee died about ten years ago leaving her with six children, and she became entitled to railroad retirement at that time; that she has received railroad retirement and other assistance and at the present time is receiving the sum of \$494.00 per month, as follows:

100% disability as a widow over 50 years of age from the Railroad Retirement Board	\$366.00
Veterans Administration	118.00
Food Stamps	<u>10.00</u>
TOTAL	\$494.00

8. That debtor has applied for a discharge of said student loans based on the hardship provision of the law.

9. That the debt due the Bank of Menomonie was a student loan guaranteed by the Wisconsin Higher Education Corporation which made payment to the Bank of Menomonie in the full amount owing by the debtor on said student loans, and is now the assignee and moving party in these proceedings.

10. That debtor has completed raising her family. That her twenty year old son who is a student is now living with her in a rented home and assists her about, and was present with her at the court hearing.

11. That the basis for the hardship claim is the general health of the debtor which vitally affects her ability to repay the loans and to obtain sufficient income from employment.

12. That the discharge of the student loans is made pursuant to 11 U.S.C. Sec. 523(a)(8)(B). The debtor used the student loans for the purpose of completing her college education and obtaining a bachelors degree in business administration, which she received at the University of Wisconsin-Stout in 1980.

13. That because of her physical condition she continued at "Stout" in a masters program in mental health counselling, and at the time of the hearing was expecting her masters degree in December 1982 or May 1983. (I am told she received it in December 1982.)

14. That counsel for the defendant in his brief

referred to the fact that there was no documented medical evidence of the plaintiff suffering any handicap. The court took judicial notice of her handicap and requested a medical report, which is made a part of these findings as if specifically repeated but not typed herein by order of the court because of debtor's right to privacy.

15. That the medical report dated June 14, 1982, was made by the Midelfort Clinic of Eau Claire for the Railroad Retirement Board. It shows that the debtor was fifty years of age; that she has a paralysis of the right leg stemming from childhood polio and obesity; that because of her difficulty in getting around she fell in early 1979 and injured her left knee which culminated in surgery for a torn cartilage in March 1979; that she was in a wheelchair post-operatively until about April 1982 when she began ambulating on crutches; that in addition to her leg problems she continues to have pain, swelling and stiffness in most of the fingers of both hands as well as at the base of the thumbs, on and off back pain in the lower part of the back, and she is presently taking eighteen aspirin a day for relief of joint and back symptoms.

16. That at the time of the court hearing debtor was in her wheelchair; that she got up the steps on crutches with the aid of her son; that she wears a leg brace when using crutches.

17. That debtor's obesity problem is tragic in that she is unable, with medical help, to lose weight and that her weight at the time of the examination by the Midelfort Clinic was approximately four hundred pounds. That the medical report shows that she is presently taking drugs for the other problems described in the medical report.

18. That debtor testified at the court hearing, as follows:

Mr. Swenson: What is your disability?

Debtor: I had polio as a child and further injuries to the -----; that was polio to the right leg ---- and four years ago I had extensive further injury to the left leg which took me off my feet. I can walk on crutches but it is very tiring and I can only do that for short periods of time.

Mr. Swenson: As far as getting upstairs, like today, how do you get upstairs?

Debtor: I take the crutches and I pray.

Mr. Swenson: And as far as getting down the stairs?

Debtor: Same thing. If it doesn't work out with the railing, or whatever, then you sit down on your rear end and you slide.

19. That out of debtor's \$494.00 monthly income she pays \$180.00 per month rent, \$77.00 for utilities, \$50.00 for fuel oil and the remaining amount is used for food, drugs,

car and living expense. Her testimony shows that her last employment was librarian aid; that she did not believe she would be able to obtain employment in the Eau Claire area upon graduation because she had difficulty in obtaining placement in the practicum work toward her masters degree.

20. Mr. Strategos testified for the defendant that the amount due on her loans at the time of the hearing was the sum of \$16,964.87.

21. The debtor is a bright appearing, cheerful, enthusiastic and hopeful individual. That she has not incurred more debts on such a small income and raising six children is most remarkable. Most of her unsecured debts, other than the student loans, are for medical services, hospitalization and drugs.

22. The brief of the defendant states that debtor is licensed and does drive an automobile. The court's notes show that she does own an automobile but do not show that she is driving. Debtor's counsel advised that she is licensed to drive but must have someone with her because she cannot handle the wheelchair and the car to do the driving and thus is not able to get around by herself.

23. That debtor has apparently tried in every way since the death of her husband to raise her family and to better herself to the point where sometime she could be self-supporting. That she is entitled under the guidelines of

bankruptcy proceedings in hardship cases to be given the opportunity of "a fresh start."

24. That to require the debtor to repay the loans described in the complaint and the motion of the defendant would be an undue hardship for her in view of the slim possibility of employment and any earnings sufficient to pay off said debts no matter how small the defendant might reduce them in the future.

25. The court would need a crystal ball to determine far into the future her possible economic success to repay said student loans.

CONCLUSIONS OF LAW

That an order be entered discharging the said debtor and plaintiff, Barbara Michaud, from said student loans herein described pursuant to 11 U.S.C. Sec. 523(a)(8)(B) based on undue hardship which the court has found to be a fact herein.

O R D E R

NOW, THEREFORE, IT IS ORDERED:

That Barbara Michaud, the debtor and plaintiff herein, be and she is forever discharged from any liability for the student loans described in these proceedings and in her schedules, and from any indebtedness to the Wisconsin Higher Education Corporation as assignee of the Bank of Menomonie,

to Lloyd's Bank of California and to the Higher Educational Aids Board, and that said discharge is made because of the undue hardship, and this order is made pursuant to 11 U.S.C. Sec. 523(a)(8)(B).

Dated: February 22, 1983.

BY THE COURT:



William H. Frawley
Bankruptcy Judge