

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:)	
)	
CHELSEA A. CONWAY,)	Case No. 09-52394-399
)	Chief Judge Kathy A. Surratt-States
)	Chapter 7
Debtor.)	
)	
CHELSEA A. CONWAY,)	Adversary No. 12-4033-659
)	
Plaintiff,)	
)	
-v-)	
)	
NATIONAL COLLEGIATE TRUST, ET. AL.)	
)	
Defendant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The matter before the Court is the Amended Complaint to Determine Dischargeability of a Debt filed by Chelsea A. Conway and Answer of Defendant National Collegiate Trust to Amended Complaint to Determine Dischargeability of a Debt. Also considered is Debtor Chelsea A. Conway's Updated Expenses, Creditor National Collegiate Trust's Reply to Supplement of Updated Expenses filed by Debtor and Plaintiff's Reply Response to NCT's Reply to Updated Expenses. The Court rules as follows:

This matter is on remand from the Bankruptcy Appellate Panel for the Eighth Circuit (hereinafter "B.A.P.").¹ This Court previously found and concluded, among other things, that Debtor Chelsea A. Conway's (hereinafter "Debtor") reasonably reliable future financial resources precluded a conclusion that repayment of student loans owed to Creditor National Collegiate Trust (hereinafter "NCT") would cause Debtor an undue hardship. See *In re Conway*, 489 B.R. 828

¹The B.A.P. was affirmed by the Eighth Circuit in an unpublished Order. See *In re Conway*, 559 Fed. Appx. 610 (8th Cir. 2014).

(Bankr. E.D.Mo. 2013). At that time, the Court accepted that Debtor's monthly income was \$2,040.36 or annual income was approximately \$25,000.00, however, concluded that this income was due to the poor economy. This Court also accepted that Debtor had monthly expenses of \$1,737.25 and disposable income of approximately \$300.00. This Court thus concluded that Debtor, who holds a Bachelor of Arts in Media Communications, is 32-years old without any dependents, and has no health issues supported by evidence, will earn a higher income in the future, particularly as the economy improves.

The B.A.P. determined this finding to be clearly erroneous and instead concluded that there is no evidence to support the possibility that Debtor will earn a higher income in the future. *In re Conway*, 495 B.R. 416, 421-22 (B.A.P. 8th Cir. 2013). The B.A.P. further concluded that Debtor does not have disposable income of \$300.00, and "even if [Debtor's] disposable income does average around \$300.00 per month, it is uncontroverted that the minimum principal and interest payment due to NCT is substantially higher – \$846.16 per month." *Id.* The B.A.P. instructed this Court to conduct "a loan-by-loan undue hardship analysis" based on Debtor's "present disposable income" which this Court must determine through analyzing Debtor's ability to "service a loan or loans of NCT over the course of an entire year." *Id.* at 423-24.

The B.A.P. did not instruct which year it considered to be "present" or which "entire year" this Court was to use to analyze Debtor's ability to "service a loan or loans." Nevertheless, it seems most appropriate for this Court to analyze Debtor's ability to service a loan or loans based on Debtor's disposable income in the entire year of November 2013 through October 2014, based in large part on Debtor's submissions which are current and complete through October 2014.

Debtor has provided that, as of October 2014, her updated average monthly net income was \$1,957.00.² Debtor has also submitted an unemployment benefit statement which reflects

²Pl. Exs. 1, 3 and 4.

income she received for a short period in 2014.³ Debtor has submitted monthly expenses of \$1,886.70.⁴ This includes the following:\$268.00 for rent, \$176.00 for utilities (electricity, heating and internet), \$80.00 for telephone, \$335.00 for food, \$50.00 for clothing, \$20.00 for laundry and dry cleaning, \$223.00 for transportation (gas and car maintenance), \$30.00 for renter's insurance, \$109.00 for car insurance, \$10.00 for personal property taxes, \$17.00 for past-due state taxes, \$184.00 for her car payment, \$59.70 for payment of federal student loan (which is separate from the loans held by NCT), \$30.00 for personal care, \$80.00 for miscellaneous expenses, \$73.00 for dental expenses (for cavity fillings) and \$142.00 for medical expenses. Debtor indicates that as of November 2014, her monthly health insurance expense will increase by \$106.00 per month, and as of April 2015, her Federal Student Loan payments will increase from \$59.70 to \$163.90.⁵ NCT states that there is no proof that Debtor will seek the proposed health insurance and therefore experience the \$106.00 monthly expense increase, and even if she does, it appears that Debtor will also experience a decrease in her doctor visit co-pays as well as the cost of prescriptions, in addition to receiving a tax credit associated with the proposed health insurance. NCT further notes that with respect to Debtor's Federal Student Loan payment, Debtor is currently on the Income-Based Repayment Plan for which Debtor will need to reapply in April 2015; therefore, it is not certain that Debtor's Federal Student Loan payments will increase. Debtor's Federal Student Loan statement indicates that if Debtor does not reapply for a reduced repayment amount in April 2015 which includes proof of Debtor's current income, then Debtor's monthly repayment amount will increase.⁶

Debtor has submitted a billing statement from NCT which indicates the following repayment

³Pl. Ex. 14.

⁴Pl. Ex. 1.

⁵Pl. Ex. 7.

⁶Pl. Ex. 7.

amounts of the loans⁷:

LOAN NUMBER	LOAN DISTRIBUTION DATE	BALANCE	MONTHLY INSTALLMENT AMOUNT
1	10/21/03	\$5,063.13	\$45.12
2	12/19/03	\$4,179.71	\$37.24
3	04/23/04	\$5,459.56	\$48.65
4	07/14/04	\$5,387.41	\$48.01
5	08/06/04	\$5,368.55	\$47.84
6	11/03/04	\$10,525.42	\$92.48
7	11/05/04	\$5,287.44	\$47.12
8	04/26/05	\$9,269.27	\$84.19
9	06/14/05	\$4,263.29	\$36.10
10	08/30/05	\$5,744.44	\$49.75
11	10/20/05	\$8,520.50	\$73.79
12	03/16/06	\$6,866.96	\$59.47
13	06/19/06	\$6,774.30	\$60.80
14	07/31/06	\$6,434.79	\$50.24
15	09/25/06	\$6,361.67	\$49.67

JURISDICTION

This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 151, 157 and 1334 (2012) and Local Rule 81-9.01(B) of the United States District Court for the Eastern District of Missouri. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I) (2012). Venue is proper in this District under 28 U.S.C. § 1409(a) (2012).

CONCLUSIONS OF LAW

The Court is tasked to conduct a loan-by-loan undue hardship analysis based on Debtor's

⁷Pl. Ex. 6.

present disposable income which this Court must determine through analyzing Debtor's ability to service a loan or loans of NCT over the course of an entire year. As indicated above, the Court will conduct this analysis through review of Debtor's monthly income and expenses from November 2013 through October 2014.

The Court has reviewed Debtor's pay stubs for the period of November 2013 through October 2014, as well as the unemployment benefit received by Debtor for a short period in 2014 and concludes that Debtor's reported average monthly net income is materially accurate. Therefore, the Court accepts that Debtor's income over the period of November 2013 through October 2014 is \$1,957.00 per month.

Debtor's expenses are reasonable for the most part. The Court only takes issue with Debtor's unsubstantiated \$80.00 miscellaneous expense and Debtor's dental expense of \$73.00 which is excessive. The Court will eliminate Debtor's miscellaneous expense amount and will reduce Debtor's monthly dental expense by \$20.00 to \$53.00.⁸ As such, the Court concludes that Debtor's average monthly expenses are \$1,786.70. Therefore, Debtor's disposable income which this Court deems to be Debtor's present disposable income is \$170.30 (\$1,957.00-\$1,786.70).

Debtor indicated that her monthly health insurance expense would increase by \$106.00 per month as of November 2014 and that her Federal Student Loan payments, which are not included in this matter, will increase from \$59.70 to \$163.90. The Court however was not presented with commensurate income and updates on expenses for any period beyond October 2014. Moreover, Debtor's Federal Student Loan statement instructs that in April 2015, Debtor will need to reapply for the Income-Based Repayment Plan, otherwise, Debtor's monthly repayment expense will increase. In any event, the Court must pick the cut-off date and perform the mandated year-long analysis, which this Court has concluded ends as of October 2014. Therefore, neither of these

⁸While Debtor's previously submitted 2012 expenses are not relevant for this analysis, the Court notes that Debtor's dental expense in 2012 was \$42.00 per month.

alleged increased expenses are included in this Court's analysis or conclusions.

Having determined that Debtor has present disposable income of \$170.30, the Court likewise concludes that payment of NCT loans in an aggregate amount not to exceed \$170.30 would not constitute an undue hardship. As such, the Court concludes that payment of the following loans would not constitute an undue hardship:

LOAN NUMBER	LOAN DISTRIBUTION DATE	BALANCE	MONTHLY INSTALLMENT AMOUNT
1	10/21/03	\$5,063.13	\$45.12
2	12/19/03	\$4,179.71	\$37.24
3	04/23/04	\$5,459.56	\$48.65
9	06/14/05	\$4,263.29	\$36.10
TOTAL			\$167.11

Therefore, the following loans will be discharged:

LOAN NUMBER	LOAN DISTRIBUTION DATE	BALANCE	MONTHLY INSTALLMENT AMOUNT
4	07/14/04	\$5,387.41	\$48.01
5	08/06/04	\$5,368.55	\$47.84
6	11/03/04	\$10,525.42	\$92.48
7	11/05/04	\$5,287.44	\$47.12
8	04/26/05	\$9,269.27	\$84.19
10	08/30/05	\$5,744.44	\$49.75
11	10/20/05	\$8,520.50	\$73.79
12	03/16/06	\$6,866.96	\$59.47
13	06/19/06	\$6,774.30	\$60.80
14	07/31/06	\$6,434.79	\$50.24
15	09/25/06	\$6,361.67	\$49.67

By separate Order judgment will be entered accordingly.


KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: April 20, 2015
St. Louis, Missouri

Copies to:

Office of the United States Trustee
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Suite 6.353
St. Louis, MO 63102

Chelsea A. Conway
4055 Hartford Street, Apt. #1
Saint Louis, MO 63116-3928

National Collegiate Trust
Attn: Bankruptcy Dept.
1 Cabot Road, 3rd Floor
Medford, MA 02155

Melinda J. Maune
Martin, Leigh, Laws & Fritzlen P.C.
16305 Swingley Ridge Road
Suite 350
Chesterfield, MO 63017

First Marblehead Corp Inc.
800 Boylston St, 34th Fl
Boston, MA 02199
dba National Collegiate Trust