UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

SANDRA IVON CRENSHAW, CASE NO. 99-11621-WSS

Debtor.

SANDRA IVON CRENSHAW,

Plaintiff,

v. ADV. PROC. NO. 99-1155

UNITED STUDENT AID FUNDS, INC. et al.,

Defendants.

ORDER ON DEBTOR'S COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT PURSUANT TO 11 U.S.C. §523(a)(8)

This matter came before the Court on the Debtor's complaint to determine dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(8). Arthur Clarke appeared for the Debtor; William Halcomb appeared for Education Credit Management Corporation (hereinafter "ECMC") and Larry Voit appeared for Kentucky Higher Education Assistance Authority (hereinafter "KHEAA"). The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). After consideration of the parties' pleadings, evidence, testimony, and arguments of counsel, the Court makes the following findings of fact and conclusions of law:

From 1981 to approximately 1985, the Debtor, Sandra Crenshaw (hereinafter "Crenshaw"), attended Alabama A&M University (hereinafter "A&M"). She obtained student loans to pay for tuition, room and board, and books. Crenshaw graduated from A&M with a bachelor of arts in

computer science. In 1994, Crenshaw went back to school at Springhill College. After approximately six to seven months, she transferred to the University of Mobile. Again, Crenshaw received student loans to finance her education. She received a masters degree in elementary education in 1996.

ECMC[1] owns nine of Crenshaw's student loans, which were disbursed from September 1993 to June 1996. Curtis Zaun, ECMC's representative, testified that the loan could be repaid at 7.72% interest for $324.25 per month over twenty years, or $298.23 per month over twenty-five years. As of March 23, 2000, Crenshaw owed $39,585.89 to ECMC. Crenshaw has one loan with KHEAA, and the balance on the loan is $1,336.00.

After graduation, Crenshaw earned certification in early childhood education. Her certification was current as of the date of trial. With her certification, Crenshaw was hired by the Baldwin County Public School System as a teacher in 1997. She worked for one school year in this position, but her contract was not renewed at the end of the school year. Crenshaw earned an annual salary of $29,000.00 as a teacher. She did not make any payments towards her student loans during 1997. However, Crenshaw had a six month grace period following graduation during which she was not required to make payments.

Crenshaw testified that she made some monthly payments on her student loans following graduation. After her contract was not renewed with the Baldwin County School System, Crenshaw received unemployment until August or September 1998. She submitted resumes to the Mobile County Public School System and the State of Alabama, but did not receive any interviews or job offers. In August 1998, Crenshaw began working at Atlantic Marine as a firewatcher. She then became a shipfitter with Alabama Shipyard, Inc., earning $10.80 per hour. She usually worked forty

---

[1]ECMC is private non-profit corporation that purchases federally guaranteed student loans. Crenshaw's loans were transferred to ECMC in September 1999.

hours per week, depending on the weather. In 1998, Crenshaw earned approximately $10,000.00. She was laid off in November 1999. She was called back, but later left Alabama Shipyard, Inc. because a back injury kept her from doing heavy work. Crenshaw then began work with the State of Alabama's Headstart Program in January 2000. She expects the job to last through May 2000, but has not been promised employment after that date. She earns $13.11 per hour for a 55-hour work week. She earns $703.00 bi-weekly.

Crenshaw lives with her elderly mother, Lula Crenshaw (hereinafter "Mrs. Crenshaw"), and her brother, Winston Crenshaw. Mrs. Crenshaw owns the family home. She is seventy-six years old, and suffers from diabetes and Alzheimer disease. Both Crenshaw and her brother help to look after their mother. Crenshaw contributes toward the upkeep of her mother's home, but does not pay all of her mother's expenses. Mrs. Crenshaw receives social security and retirement benefits of approximately $520.00 per month. Crenshaw's brother is unemployed. Some of the money that Crenshaw contributes to the household expenses is used to support her brother. Crenshaw has monthly living expenses of $1,250.00 per month, which include the following: electricity- $200.00; water/sewer- $25; telephone- $50.00; food- $300.00; clothing- $150.00; laundry/dry cleaning- $50.00; medical expenses- $25.00; transportation- $100.00; car payment- $350.00.[2] She is presently looking for other employment. Crenshaw testified that employers tell her that she is over-qualified for manual labor jobs, but has no experience for more skilled employment. She has no prospects for finding another teaching position at this time. Crenshaw filed her chapter 7 petition with this Court on May 6, 1999.

Section 523(a)(8) of the Bankruptcy Code provides that discharge under the applicable sections of the Code does not discharge a debt:

---

[2]See ECMC's exhibit 17, number 23.

> (8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, *unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents.* (Emphasis added.)

The legislative history of § 523(a)(8) reveals a strong policy against allowing individuals to use bankruptcy to discharge their student loans. See Conner v. Illinois State Scholarship Commission (In re Connor), 89 B.R. 744, 747 (Bankr. N.D. Ill. 1988). As a result, "a debtor must show that any repayment of the loan would be more than an inconvenience, cause a reduction in lifestyle or work a hardship on the debtor or his/her family." Id.

Because the Bankruptcy Code does not define "undue hardship", courts have designed a variety tests to determine undue hardship. This Court has adopted the formula devised by the Second Circuit Court of Appeals in Brunner v. New York State Higher Education Services Corp, 831 F.2d 395, 396 (2nd Cir. 1987) for determining undue hardship. The factors considered are:

1) whether the debtor can maintain, based on current income and expenses, a "minimal" standard of living for the debtor and the debtor's dependents if forced to repay the student loans;

2) whether additional circumstances exist which indicate that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and

3) whether the debtor has made a good faith effort to repay the loan.

Under the Brunner test, this Court must determine whether Crenshaw can maintain a minimal standard of living if required to repay her student loans. Crenshaw has a net monthly income of $1,406.00. Her monthly expenses are $1,250.00, which leaves her small excess of $156.00. At the present time, Crenshaw cannot maintain a minimal standard of living and pay $300.00 to $325.00 per month toward her student loans.

Crenshaw's present circumstances lead to the second factor of the Brunner test: whether

additional circumstances indicate that the debtor's financial difficulties will persist for a significant portion of the repayment period. The crucial aspect of Crenshaw's financial situation is her underemployment. She has a degree in computer science, one of fastest growing areas's of the economy, a master's degree in education and a teaching certificate. Despite these qualifications, she has worked in unskilled, low-paying jobs. Crenshaw testified that she has submitted resumes to the public schools in the area, but she did not indicate that she contacted the schools to determine whether they are hiring. She also did not mention whether she had considered the private and church-affiliated schools in Mobile and Baldwin County. Even an entry level computer technician job will pay more that Crenshaw's present position. While Crenshaw has had difficulty in the past obtaining jobs in her field of study, the Court is not convinced that her inability to obtain a position will persist into the future. A course in interviewing skills may enhance Crenshaw's ability to obtain a job. The Court acknowledges Crenshaw's obligation to her elderly mother, but, like her inability to obtain skilled employment, this situation is unlikely to last throughout the payment period for her loans. Based on the foregoing, the Court finds that Crenshaw's present circumstances are not likely to last for a significant portion of the repayment period.

The final factor under the Brunner inquiry is whether Crenshaw has made a good faith effort to repay their student loan debts. Crenshaw testified that she made some payments on her loans after receiving her first degree. However, ECMC's records do not indicate any significant number of payments. Crenshaw made no payments during that year that she was gainfully employed as a teacher. The six month grace period would have covered some of the time that Crenshaw worked as a teacher; however, once the grace period ended, Crenshaw was obligated to begin paying on her loans. The records indicate that she did not. Therefore, the Court finds

that Crenshaw did not make a good faith effort to repay her loans.

Many courts have interpreted §523(a)(8) to allow them to modify the student loan agreement in order to give the debtor relief from the harsh results of nondischargeability, or find that the equitable powers under 11 U.S.C. §105(a) give them authority to modify the loan agreement. See Cheeseman v. Tenn. Student Assistance Corp., (In re Cheeseman) 25 F.3d 356, 360-61 (6th Cir. 1994) (Court affirmed the bankruptcy court's decision to postpone a final determination of dischargeability for 18 months under the bankruptcy court's equitable powers under 11 U.S.C. § 105(a)).[3] This Court is in agreement with those cases giving bankruptcy courts authority to grant partial discharges or to amend student loan agreements under §523(a)(8).

Applying the Brunner factors, the Court finds that the student loan held by ECMC and KHEAA will not impose an undue hardship on Crenshaw or her dependants. Although Crenshaw's current income will not allow her to make payments on her student loan obligations, she could make payments on the loans in the future. Crenshaw will have to find more lucrative employment. She indicated that her position with the State of Alabama will end in May 2000, therefore she will be seeking other employment. The Court finds that the payments on the

---

[3] See also Rivers v. United Student Aid Funds, Inc., (In re Rivers) 213 B.R. 616, (Bankr. S.D. Ga.1997) (Court granted a partial discharge); Dennehy v. Sallie Mae, (In re Dennehy) 201 B.R. 1008, 1012-13 (Bankr. N.D. Fla. 1996) (Court found debt to be nondischargeable, but deferred collection and accrual of interest for two years); Heckathorn v. United States, (In re Heckathorn) 199 B.R. 188, 196 (Bankr. N.D. Ok. 1996) (Court found debt to be nondischargeable, but deferred execution on the judgment for five years, halted accrual of interest for three years, and set monthly payments for two years); Fox v. Student Loan Marketing Association, (In re Fox) 189 B.R. 115, 120 (Bankr. N.D. Oh. 1995) (Court finds student loan to be nondischargeable, reduces total amount of loan by 80%, and grants a one-year deferral); and Doyle v. Higher Ed. Assistance Foundation, (In re Doyle) 106 B.R. 272, 275 (Bankr. N.D. Ala. 1989) (Court finds debt to be nondischargeable, but holds that no execution shall occur as long as the debtor makes a monthly payment of $50.00 until the judgment is paid).

student loans should be abated for six months. The interest on the student loans should be abated for a period of one year from the date of this order. The student loans at issue are nondischargeable. It is hereby

ORDERED that the relief sought in the Debtor's complaint to determine dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(8) is **DENIED**; and it is further

ORDERED that the payments on the loans of ECMC and KHEAA shall abate for six (6) months from the date of this order; and it is further

ORDERED that the interest of the loans of ECMC and KHEAA shall abate for one (1) year from the date of this order; and it is further

ORDERED that the debts to ECMC and KHEAA are **NONDISCHARGEABLE** in this bankruptcy.

DATED: May ____, 2000

____
WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE