

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

In re Mary M. Soto,

BKY 3-92-3857

Debtor.

Mary M. Soto,

ADV 3-93-3172

Plaintiff,

vs.

MEMORANDUM ORDER

Higher Education Assistance  
Foundation, a Minnesota non-  
profit corporation,

Defendant.

This matter came on for hearing Monday, October 25, 1993, on motions for summary judgment by both the plaintiff and the defendant. Appearances are noted in the record. The Court, having received and considered arguments and memoranda of law of counsel, and being fully advised in the matter, now makes this MEMORANDUM ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

FACTS

Plaintiff Mary M. Soto ("Soto") filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code on July 10, 1992. The defendant Higher Education Assistance Foundation ("HEAF") is a guarantee agency within the Federal Family Educational Loan Programs of the Higher Education Act of 1965, as amended, 20 U.S.C. Section 1071. HEAF is governed by the Higher Education Act ("HEA").

In May, 1988, plaintiff Soto defaulted on her obligation to repay two educational loans guaranteed by HEAF. HEAF, as guarantor, paid the lenders on both defaulted educational loans. After plaintiff Soto filed Chapter 13, HEAF then filed two proof of claims, one for each defaulted educational loan on July 30, 1992. The first proof of claim consisted of \$3,206.54 in principal, \$269.61 in interest and \$853.37 in unpaid fees(FN1) for a total of \$4,329.52. The second proof of claim consisted of \$2,810.13 in principal, \$667.20 in interest and \$840.74 in unpaid fees(FN2) for a total of \$4,318.07. The plaintiff does not dispute the amounts listed under principal and interest in the proof of claims.

Plaintiff Soto alleges in Count I of her Complaint, that HEAF violated various statutory and regulatory provisions promulgated pursuant to the HEA by including collection costs in the proof of claims. Due to the alleged violations by HEAF, plaintiff Soto claims an implied private right of action under the HEA for damages in the amount of \$25,000 pursuant to 20 U.S.C. Section 1082(g).

Additionally, plaintiff Soto: alleges breach of contract in Count II; seeks disallowance of HEAF's claim for collection costs in Count III; and, in Count IV, she seeks punitive damages and sanctions. Plaintiff Soto and defendant HEAF have both filed motions for summary judgment.

#### DISCUSSION

Defendant HEAF indicated at the hearing that it had offered to amend its original proof of claims and eliminate the collection costs listed in the unpaid fees sections, but that the plaintiff refused to accept the offer in resolution of her objection. HEAF represented a continuing willingness to amend the proof of claims to delete the collection costs. The Court will order the amendment, based on consent of the claimant. Accordingly, there is no need to address the merits of Counts II, III and IV of the Plaintiff's Complaint because the allegations will be moot in light of the amended proof of claims. The only issue outstanding is plaintiff Soto's Count I claim for damages of \$25,000 under a theory of an implied private right of action.

Plaintiff Soto claims an implied private right of action for damages under the HEA pursuant to 20 U.S.C. Section 1082(g).(FN3) Plaintiff Soto is attempting to use this provision as a remedy for damages in this Court. The plaintiff alleges, inter alia, that HEAF violated various statutory provisions of the HEA and regulations promulgated thereunder, by imposing collection costs based on a flat percentage of twenty-five percent (25%) of the outstanding balance of the loan, and not on the actual costs of collection. The Court need not address each and every one of plaintiff Soto's allegations of violations by HEAF of the HEA for the reasons discussed below.

Both parties agree that no express private right of action exists under the HEA. The seminal case, *Cort v. Ash*, 422 U.S. 66 (1974), articulates the four-part test for determining whether an implied private right of action exists under federal statutes. Based upon an analysis of the Cort test, Courts have consistently found that no implied private right of action exists under the HEA. See *L'ggrke v. Benkula*, 966 F.2d 1346 (10th Cir. 1992) (Secretary has exclusive enforcement authority under the HEA and regulations promulgated thereunder); *Jackson v. Culinary School of Washington*, 788 F. Supp. 1233 (D.D.C. 1992) (no private right of action by students against guaranty agency under HEA); *Keams v. Tempe Technical Institute, Inc.*, 807 F. Supp. 569 (D. Ariz. 1992) (no express or implied private right of action under HEA); *Hudson v. Academy of Court Reporting, Inc.*, 746 F. Supp. 718 (S.D. Ohio 1990) (no implied private right of action after analyzing specific relevant sections of the statute or regulations); and *St. Mary of the Plains College v. Higher Education Loan Program of Kansas, Inc.*, 724 F. Supp. 803 (D. Kan. 1989) (Secretary's extensive enforcement authority is the exclusive means to ensure a lender's compliance with the statutes and regulations).

The plaintiff has not provided the Court with any compelling reasons to disturb the great weight of precedents against finding an implied private right of action under the HEA. In fact, plaintiff Soto has not proven any damages. Defendant HEAF has offered to amend the proof of claims and eliminate the collection costs from the total amounts. The plaintiff does not dispute the amount of principal or interest listed in either proof of claims. In light of Defendant's offer, and lack of dispute on any of the other amounts listed in the proof of claims, this Court is unable

to find that the plaintiff suffered any damages. Furthermore, this bankruptcy court cannot administer an enforcement provision granted exclusively to the Secretary of Education. Accordingly, this Court can find no good reason to deviate from the well-settled law in this area.

DISPOSITION

Based upon the foregoing, it is HEREBY ORDERED:

1. Defendant HEAF amend both its proof of claims to eliminate the collection costs in the unpaid fees sections.
2. Counts II, III and IV of Plaintiff's Complaint are dismissed as moot.
3. Plaintiff Soto's motion for summary judgment is denied.
4. Defendant HEAF's motion for summary judgment, that the plaintiff has no private right of action under the HEA for damages pursuant to 20 U.S.C. Section 1082(g) on Count I is granted, and accordingly, HEAF is not liable for Count I of the Plaintiff's Complaint.
5. This action is otherwise dismissed, with prejudice, on the merits and without cost and disbursements to any party.

LET JUDGMENT BE ENTERED ACCORDINGLY AS TO ITEM 4.

By the Court:

Dated

DENNIS D. O'BRIEN

U.S. BANKRUPTCY JUDGE

(FN1) \$834.53 of the unpaid fees total was attributed to collection costs. Plaintiff's Complaint, Exhibit B, page 1.

(FN2) \$800.74 of the unpaid fees total was attributed to collection costs. Plaintiff's Complaint, Exhibit B, page 1.

(FN3) 20 U.S.C. Section 1082(g) authorizes the Secretary to impose a civil penalty, not to exceed \$25,000 for each violation, failure or misrepresentation by a lender or a guaranty agency of this part or any regulation prescribed thereunder.