

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
LESLIE G. SMITH,)	CASE NO. BK93-80482
)	
DEBTOR)	A93-8139
)	
CREDIT COLLECTION SERVICES, INC.,)	
Assignee of Mount Marty)	
College, A Corporation,)	
)	CH. 7
Plaintiff)	
vs.)	
)	
LESLIE G. SMITH a/k/a)	
LES SMITH and FAITH ANN SMITH,)	
)	
Defendant)	

MEMORANDUM

This matter was submitted by stipulated facts. Wanda Howey-Fox of Harmelink & Fox, Yankton, South Dakota, represents the debtor/defendant. Douglas E. Quinn of McGrath, North, Mullin & Kratz, Omaha, Nebraska, represents the plaintiff. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A).

Background

The debtors, Leslie G. Smith and Faith Ann Smith, filed for Chapter 7 bankruptcy protection on March 25, 1993. The plaintiff, Credit Collection Services, Inc. (CCS), filed this adversary proceeding on June 21, 1993. CCS filed the action as the assignee of Mount Marty College (the College), an educational institution located in Yankton, South Dakota.

CCS alleged that the debtors are indebted to CCS in the sum of \$3,488.31 plus interest and that the debt is non-dischargeable pursuant to 11 U.S.C. § 523(a)(8). It is the position of CCS that Faith Ann Smith attended the College and that the debt due to CCS represents the educational benefit she received from the College.

Before she married Leslie Smith, Faith Ann Smith, who was then Faith Ann Wheeler, applied for admission to the College for the Fall term in 1988. The parties agree that Faith Ann (Wheeler) Smith did not receive any funds from the College, or any other source, for educational purposes and that Faith Ann (Wheeler) Smith did not sign any document which obligates her to repay Mount Mary College, or its assignee, for the cost of her tuition or interest. Besides her application for admission, the only other document Faith Ann (Wheeler) Smith executed prior to the start of classes was to register for eighteen (18) hours of classes on August 8, 1988. It is the theory of CCS that by registering for classes, Faith Ann (Wheeler) Smith became obligated to the College and its assignees, for an entire semester of tuition.

It is the position of Faith Ann (Wheeler) Smith that she only attended the College for two days of classes, and after two days, an unidentifiable employee of the college informed her that she should wait a semester before attending the College because she did not take either the ACT or SAT college entrance exams prior to registering for admission, and if she waited until January of 1989, she could take one of the entrance exams in November, 1988. On this basis, the debtor claims the debt is dischargeable because no educational benefit was received within the meaning of 11 U.S.C. § 523(a)(8).

Faith Ann (Wheeler) Smith married Leslie Smith on October 20, 1990. Because this cause of action arose prior to the defendants' marriage and because he has no other connection to the College or CCS, Leslie Smith's motion for summary judgment was granted by this Court on December 23, 1993, and he is no longer a party to this suit [hereinafter "debtor" or "defendant" shall refer only to Faith Ann (Wheeler) Smith, unless otherwise noted].

The parties stipulated that the resolution of this matter may be accomplished by the submission of affidavit evidence and other materials to the Court.

Findings of Fact

1. The debtor executed an application for admission to the College prior to or on August 8, 1988. Exhibit A, Application for Admission. On the application, the debtor wrote that she planned to take the ACT or SAT college entrance exam in the Fall of 1988, and therefore, she left a blank in the space reserved for a test score. She also wrote that she planned to pay for her tuition costs through federal financial assistance. The application stated that forms for applying for federal financial aid were available from her guidance counselor or the Financial Assistance Office. The application did not mention tuition, liability for tuition or

the Mount Marty College Catalog. The College marked on the debtor's application that it had been "accepted" on August 8, 1988.

2. The debtor never applied for federal financial assistance. Sister Pierre Roberts (Sister Roberts), the debtor's guidance counselor, did not provide a form for or advise the debtor about filling out financial aid forms.

3. The debtor registered for fall classes on August 10, 1988. Exhibit C, Registration Form. The Registration Form filled out by the debtor did not include any statements that would inform the debtor that she was liable to the College for tuition expenses upon filling out the Registration Form or by submitting the form to the College for a class schedule. In addition, the Registration Form did not refer the debtor to the policies stated in the Mount Marty College Catalog (Catalog), nor did it state that the policies listed in the Catalog were binding on students.

4. There is no formal correspondence from the College to the debtor informing her that she had been accepted for Fall classes at the College. Her student file contained a memo from the Admissions Office to the Registrar President, Student Life Academic Advisor and College Relations Department Chairperson stating that she had been accepted into the college and that she would be applying for financial aid. Exhibit C, untitled memo. In addition, an administrator marked "Accept 8-8-88" and initialed her application to the College, and a different administrator marked "Accepted 8-8-88," "Dec. 88 suspended/ finished Fall term 3 courses" on her registration form. However, the student file does not contain a copy of any correspondence addressed to the debtor stating that she qualified to attend the College and was, therefore, accepted.

5. The College prepared a Statement of Student Account for August 11, 1988, which stated that the debtor's full time tuition plus fees were due on September 2, 1988. Exhibit A, Statement of Student Account, dated 8/11/88. Neither party discussed whether these billing statements or copies thereof were mailed to students, but presumably the same or a similar document was mailed to students because students' addresses are listed on the document. See generally Exhibit A. At least one of the debtor's account statements listed an address, "Box 490," that was different from the home address of the debtor. Exhibit A, Statement of Student Account dated 10/3/88. If "Box 490" referred to a student mailbox at the College, the debtor probably did not receive any correspondence addressed to "Box 490" after she quit attending the College. However, the testimony submitted does not state whether the "Box 490" address was a campus address.

Since handwritten math calculations are located on several of the debtor's billing statements, it appears that the copies submitted to the Court were the College's copies of the billing statements, which were used by the College billing office to compute the accrual of interest and charges for the next month's billing statement.

6. The debtor attended classes at the College for approximately two or three days before quitting school. The syllabus and the class grading report from the debtor's "Principles of Biology" class support this conclusion. Exhibit C, Principles of Biology: Biology 103 (syllabus) & untitled "Bio 103" grade report. The grade report from the class instructor listed three grades for the debtor. The syllabus for the class stated that students would be graded for one quiz and one lab each week. The instructor did not mark on the grading report whether the grades were for quizzes or labs or other work, but there were only three grades for the debtor. The other students in the class had approximately 10 more grades on the copy of the exhibit given to the Court, and the Court's copy of the exhibit does not even show the entire semester's grades.

The debtor registered to attend "Principles of Biology" on Mondays, Wednesdays, and Fridays, and she had a lab section on Thursdays. Exhibit C, Registration Form. The student calendar for the year states that classes began on Wednesday, August 31, 1988. Exhibit C, Mount Marty College Calendar, Fall 1988-1989. Therefore, the grades listed for her class and the debtor's testimony support the conclusion that she attended classes for no longer than three days. There is no evidence concerning the remainder of the debtor's classes, but there is also no evidence that contradicts the debtor's testimony that she stopped attending all of her classes at the College after three days.

Sister Roberts prepared a letter on January 5, 1994, as a result of this litigation. Exhibit C, letter dated 1/5/94. In the letter, she alleged that the grade record for the debtor's "Principles of Biology" reflects about one fifth of the total grades given in the class over the semester. This statement is an exaggeration and is inconsistent with the instructor's written comments on grading in the syllabus. Sister Roberts also admitted in her affidavit that she has no personal knowledge of what each numerical number noted on the grading report represents.

7. The debtor stopped attending the College after an unidentified nun informed her that she should wait a semester before attending the College because she did not take either the ACT or SAT college entrance exams. The Catalog for 1987-89 states:

"Either ACT or SAT scores must be submitted by all applicants." Exhibit B, Academic Program: Requirements for Admission of Freshmen (emphasis added) (only fragments of the Mount Marty College Catalog were submitted, and the fragments are located in both Exhibits B and C). Sister Roberts testified that the rule stated in the Catalog was not strictly followed at the College, especially in situations like the debtor's case where the student had already been out of high school for more than one year before registering for classes at the College.

Sister Robert's recollection does not coincide with the debtor's file. The debtor's file does not contain any waiver of the ACT or SAT requirements. Even though her application was accepted after she disclosed that she had not taken the ACT or SAT exam, it is plausible based upon the lack of detailed information contained in the debtor's file to conclude that the College did not realize that it had accepted an application without ACT or SAT scores until after the debtor began school, and this fact was not caught until the debtor talked with the unidentified nun.

The memo from Admissions to the Registrar President, Student Life Academic Advisor, and College Relations Department Chairperson treated the debtor as a regular student and did not acknowledge that the written policies of the College were waived on her behalf. Exhibit C, untitled memo dated 8/8/88. The ACT and SAT requirements are strictly worded in the Catalog, and the testimony by Sister Roberts that an entrance requirement was waived would be credible if the waiver was noted in the memo or in another part of the debtor's file. See Exhibit C. Since no such documentation of a waiver exists, the debtor's memory of events is more credible than Sister Robert's recollection because the debtor's testimony coincides with the written policies of the College.

8. The debtor executed two drop slips for two of her classes, but she did not execute any drop slips for her other three classes. Exhibit C, Mount Marty College Drop/Add Form. The two drop slips are dated September 26 and September 27, 1988. The drop slips are signed by Faith Ann Wheeler and Sister Roberts. The handwriting which wrote down the classes dropped and the dates on the drop slips is Sister Roberts' handwriting, not the debtor's. The September 27, 1988 drop slip contains handwritten math calculations to determine the debtor's 40% refund for the two classes dropped, which was credited to the debtor's Statement of Student Account on September 27, 1988. Neither party explained why the debtor did not drop all five classes at this time, even though the parties knew or should have known that the debtor was not attending the remaining three classes.

9. Even though Sister Roberts could not specifically recall meeting with the debtor, Sister Roberts testified that her regular policy is to meet in person with students who desire her signature for drop slips. The debtor testified that she did not return to the College after she was told to leave the college, but the debtor did not explain how her signature ended up on the two drop slips which Sister Roberts dated on September 26 and September 27, 1988. Therefore, based on the affidavits, it appears as though either the debtor returned to the College to execute the drop slips, or Sister Roberts was given two blank drop lists before the debtor stopped attending the College and filled out the drop slips herself on September 26 or September 27, long after the debtor stopped attending the College.

10. The College's policy for tuition refunds is located in the Catalog. Exhibit C, Financial Information, Refunds. According to the Catalog, no tuition is charged for a class dropped during the first two weeks of classes. However, if a student withdraws from the College or changes from full-time to part-time status after that period of time, tuition is refunded on a sliding scale, based on the number of days the student attended classes before withdrawing. In addition, a student who withdrew from the College needed the signature of the Vice President for Academic Affairs. The debtor received 40% of the tuition charged two classes because she dropped the two classes before September 28, 1988.

Because the debtor's drop slips were dated September 26 and September 27 respectively and because the debtor received 40% of the cost of the two classes as a reduction in unpaid tuition, the College adhered to the policies in the Catalog for the debtor's refund or tuition reduction. However, there is no evidence that the debtor ever saw the Catalog or signed any agreement with the College agreeing to be bound by the policies stated in the Catalog. The debtor's actions suggest that she was not aware of the policies in the Catalog. Even though the debtor quit attending all five classes within the first week of class and within a period of time for a full refund of tuition, the debtor only dropped two classes and did so over twenty days after she quit attending classes. Such actions suggest that either the debtor was confused about how to withdraw, or she was misled about how to withdraw. The debtor testified that because the unidentified nun told her she could not attend without the SAT or ACT score, she presumed that she did not have to withdraw because her registration was not valid.

11. Sister Roberts testified that the debtor met with her on at least one other occasion in mid-October to discuss the debtor's mid-term standing. Sister Roberts destroyed all of her personal notes concerning the debtor, so there is no documentation of this meeting. However, Sister Roberts testified about what she is sure

she "would have" told the debtor at the meeting. Specifically, Sister Roberts stated that she would have discussed the fact that the debtor was not attending classes and that she was failing all of her classes. Sister Roberts also stated that she sent a letter, that has since been lost, to the debtor after the meeting to follow up on their discussion.

It is impossible to determine whether this meeting did in fact occur. It is difficult to believe that the debtor, who was not attending any classes, suddenly decided to attend a mid-term counseling session with Sister Roberts. If the meeting did occur, there is no evidence that any constructive academic counseling was accomplished at this meeting. The meeting did not cause the debtor to attend any classes, Sister Roberts did not take any action before or after the meeting to assist the debtor with obtaining federal financial aid or with providing any type of academic assistance, i.e. recommending a tutor, etc., and the debtor did not discover that she needed to drop three more classes to withdraw from the College. For these reasons, the debtor's testimony that no meeting took place in October is more credible than Sister Roberts'.

12. The College sent the debtor a notice of suspension from the College on December 21, 1988. Exhibit C, letter dated 12/21/88. The debtor was suspended for failing all three of the classes that the debtor remained registered for. The letter does not mention any delinquent tuition amounts.

13. The College did send to the debtor at least one notice of an outstanding tuition balance prior to December 5-9, 1988. Exhibit A, letter "From: Sister Evangeline Anderson, To: Faith Wheeler." The letter, even though not dated, stated that the debtor was not eligible to register for the Spring semester on December 5-9 until her account was paid in full. Since the debtor was suspended on December 21, the letter must have been sent prior to December 5-9, 1988. However, the address on the letter is "Box: 490." If this address was an address for the debtor's mailbox number at school, the debtor would not have received this notice because she had not attended school for several months prior to December, 1988. The conclusion that this notice was sent to the debtor at her school box number and not received by her personally coincides with the debtor's testimony that she did not receive any letters from the College concerning tuition bills at any time prior to when she left for the armed forces in mid- to late January, 1989.

14. After the debtor joined the armed services, her parents forwarded information to her in February of 1989 concerning the unpaid tuition bill. A Statement of Student Account dated February

28, 1989 contains a notice to the debtor that if she did not respond by March 15, 1989, the matter would be sent to a collection agency.

15. In 1989, the debtor did not respond to the letter stating that she owed money to the College because she was under the belief that her parents took care of the tuition bill. The debtor believed through her parents that the College at first offered to drop the matter for \$500.00, but that the parents convinced the College that the debtor was never a true student at the College. Therefore, the debtor thought the matter was closed.

16. The College sent the matter to "Midland Credit Management" on March 30, 1989.

17. The College continued to accrue periodic interest charges on the debtor's Statement of Student Account. However, no interest was charged between March 1989 and September 1991 and no interest has accrued since the debtor and her husband filed bankruptcy in March 1993.

18. The debtor did not receive any further written or oral correspondence from the College or a collection agency until 1991 or 1992. At this point, the debtor and CCS or the College were in periodic contact with each other concerning the status of the obligation, and such exchanges continued up to the bankruptcy filing. Exhibit A.

Discussion and Decision

CCS alleges that the debtor's debt is nondischargeable pursuant to Section 523(a)(8) of the Bankruptcy Code. The portions of Section 523(a)(8) which are relevant to this case state:

(a) A discharge under section 727, ... of this title does not discharge an individual debtor from any debt -- (8) for an educational benefit overpayment or loan ... made under any program funded in whole or in part by a ... nonprofit institution, or for any obligation to repay funds received as an educational benefit, scholarship or stipend,...

11 U.S.C. § 523(a)(8).

The debtor takes the position that because no tangible funds were received by the debtor, the debtor did not "receive" an educational benefit or loan under Section 523(a)(8). The debtor is

correct to the extent that phrase applies to this case. However, the focus in this case is whether the extension of credit by the College was an "educational benefit overpayment or loan," not an "obligation to repay funds received as an educational benefit."

A. Educational Loan

A "loan" pursuant to Section 523(a)(8) has been defined by the Eighth Circuit as encompassing the following definition:

In order to have a loan, there must be an agreement, either express or implied, whereby one person advances money to the other and the other agrees to repay it upon such terms as to time and rate of interest, or without interest, as the parties may agree ...

United States Dept. of Health and Human Serv. v. Smith, 807 F.2d 122, 124 (8th Cir. 1986) (citations and quotations omitted). The term "loan" should be defined broadly for Section 523(a)(8) purposes:

[T]he central issue in determining dischargeability [pursuant to Section 523(a)(8)] is whether the funds were for educational purposes, not whether the funds constituted a loan.

Id. at 126.

The debtor did not receive an "educational loan" from the College in this case because the debtor and the College did not enter into an agreement to loan money to the debtor. There is no written contract between the parties that requires the debtor to pay tuition to the College. In addition, the College and the debtor did not enter into an agreement to charge the debtor interest or late charges. CCS takes the position that upon registering for classes and by failing to drop all of her classes within the first two weeks of the school term, the debtor implicitly agreed that she would pay the College for a full semester of tuition.

The position of CCS is without merit. The debtor did not enter into an implied agreement to pay the College or its assignee for a semester's worth of tuition. On her application to the College, the debtor informed the College that she intended to pay any resulting tuition with federal financial aid. Therefore, the debtor did not agree to any extension of credit from the College or

to any of the loan terms that the College has billed the debtor because she intended to receive financing from another source.

The remaining issue, then, is whether the debtor entered into an implied agreement because she knew or should have known that a tuition obligation would arise when she started to attend classes. Based on the circumstances in this case, the debtor did not enter into an implied agreement by virtue of the fact that she attended three days of classes. The debtor left the College after an employee of the College informed her that she had to take her ACT or SAT before she could attend the College. The debtor's belief that she was not a qualified student at the College and that her registration was void was reasonable. Therefore, the debt billed to the debtor by the College is dischargeable.

In addition, there is absolutely no agreement, express or implied, that requires the debtor to pay the College interest or late payment charges. To constitute part of an "educational loan" under Section 523(a)(8), interest and other terms of the loan must be included in the agreement. Because there is nothing in the evidence which would even imply that the debtor should have been aware of the interest charges and late payments that accrued on the obligation, all interest and late payment charges that were charged to the debtor are dischargeable.

Other courts have held that it is not necessary for the student to receive actual funds from the school because an extension of credit by the school to the student constitutes an "educational loan" under Section 523(a)(8). Andrews University v. Merchant (In re Merchant), 958 F.2d 738 (6th Cir. 1992); University of New Hampshire v. Hill (In re Hill), 44 B.R. 645 (Bankr. D. Mass. 1984). Merchant, which followed a definition of "loan" that is similar to the one used by the Eight Circuit in Smith, held that the extension of credit by the school to the debtor was a "loan" and nondischargeable because the debtor signed an agreement with the school recognizing the indebtedness. 958 F.2d at 741.

Merchant relied heavily on the bankruptcy case University of New Hampshire v. Hill (In re Hill), 44 B.R. 645 (Bankr. D. Mass. 1984). In Hill, the debtor, who was registering for classes, represented to the University that the proceeds from financial aid would be used to pay his tuition, and therefore, without requiring the debtor to sign anything, the University extended to the debtor short term credit to cover tuition for one semester of school. Id. at 646. The financial aid arrived near the end of the semester, but by that time the debtor had been suspended from the University. Id. Therefore, the debtor took the financial aid and applied it towards tuition at another college. Id.

The bankruptcy court rejected the argument that there is a distinction between the extension of credit and the receipt of a loan. Hill, 44 B.R. at 647. The holding also relied heavily on the fact that, even though there was not a written agreement, the debtor made an affirmative representation to the University had extended him credit and that he was expected to pay back that debt when his financial aid arrived. Id.

These cases support the conclusion that the debt in this case is dischargeable. In both cases, there was evidence of an express or implied agreement. In Merchant, the debtor signed an agreement, and in Hill, the debtor affirmatively informed the college that he would repay the tuition. Also, both debtors were bona fide students at the schools. Therefore, this case is distinguishable from other cases which have found that the alleged extension of credit by the schools constituted an "educational loan."

B. Educational Benefit or Educational Benefit Overpayment

An alternative consideration is whether the extension of credit by the College is either an "educational benefit" or "educational benefit overpayment."

The Bankruptcy Court for the Eastern District of Pennsylvania reached the conclusion that in the absence of an agreement concerning tuition, an extension of credit by a college did constitute a nondischargeable obligation under Section 523(a)(8) that was consonant with the amount of time that the debtor attended the school. Najafi v. Cabrini College (In re Najafi), 154 B.R. 185, 188-90 (Bankr. E.D. Pa. 1993). Najafi distinguished itself from Merchant and Hill by agreeing with the debtor that the extension of credit to the debtor by the college was not an "obligation to repay funds" or an "educational loan" since no funds were received by the debtor in that case. Id. at 190. Instead, the court decided to read the phrase "educational benefit overpayment or loan" as consisting of three nouns -- benefit, overpayment and loan -- which are all modified by the adjective "educational." Id. Thus, in that case, the debtor received an "educational benefit" when the school accepted his registration, and the debtor attended classes without paying for his tuition or making arrangements to pay his tuition in advance. Id.

The Court noted that even if it was incorrect and that the proper phrase was "educational benefit overpayment," the debtor would still be liable for the benefit received because "educational benefit overpayment" was defined by the court to mean the following:

[A]n instance where a student received an educational benefit which was in excess of that for which the student paid. [A] debtor's receipt of educational benefit for which he failed to make any payment would appear to meet this definition.

Najafi, 154 B.R. at 190.

The "debt" which was found to be an "educational benefit" or "educational benefit overpayment" in Najafi was not the total amount charged to the debtor by the college. Id. Similar to this case, the debtor in Najafi was permitted to register for classes without prepaying his tuition or making other arrangements to pay his tuition, and thus, there was no agreement between the college and the debtor for tuition payments. 154 B.R. at 188. In addition, the debtor only attended classes for a short period of time, two weeks, before quitting school due to illness, and when he ceased attending classes, he failed to follow the college's official policies for withdrawal or to provide written notice to the college that he was no longer attending the college. Id. Also, similar to this case, the college attempted to bill the debtor for an entire semester of tuition. Id.

The court concluded that it would be inequitable to permit the college to receive an entire semester's worth of tuition when the debtor only attended for two weeks. Najafi, 154 B.R. at 190. Therefore, it concluded that the college was only entitled to the portion of the tuition that was expended in educating the debtor during the two weeks that the debtor attended the school plus limited administrative expenses. Id.

The college argued that its refund policy for students who withdrew during the semester, which was similar in structure to the Mount Marty College refund policy listed in the Catalog, should control, and the tuition debt for the entire semester should be nondischargeable because the debtor failed to "officially" withdraw from the college. Id. at 190-91. The court rejected the college's reasoning because there was no "meeting of minds" as to how or whether the debtor would pay for tuition during the semester because the debtor was admitted the school without regard to the college's regular policy of requiring students to prepay or partially pay their tuition. Id. at 191. The court opined:

Since [the college] was not adhering to its normal policies in its acceptance of the Debtor, it seems fair to us to decide the Debtor's liability to [the college] on an equitable basis rather than by strictly

applying the policies set forth in [the college's] catalogue.

Id. (concluding that the debtor was liable for the two week period of time that the debtor attended classes and limited administrative expenses).

The circumstances in this case are very similar to the circumstances in Najafi: the debtor and the College did not enter any agreement regarding the payment of tuition; the debtor only attended a short period of time, two or three days; the debtor did not withdraw from the College in accordance with its formal policies; and the College only offered a partial refund to the debtor, and otherwise, expected the debtor to pay for the entire semester of tuition.

If the analysis presented in Najafi controlled this case, only the portion of the semester tuition obligation which represented an "educational benefit" to the debtor would be nondischargeable debt. The maximum amount that could be nondischargeable would be the amount of tuition applicable for the three days of classes that the debtor did attend.

Even though Najafi is similar to this case, it does not control this case. The circumstances in this case differ from the circumstances in Najafi on one important fact.¹ The debtor in Najafi dropped out of school due to illness, but the debtor in this case dropped out of the College because she was told that she did not meet all of the prerequisite requirements to attend the College. Therefore, the debtor in this case could not have received any educational benefit for the three days that she did attend the College because she was not a qualified student at the college. Because the debtor did not receive an "educational

¹ The legal analysis in Najafi is not entirely persuasive. Because this case can be distinguished on the facts, it is not necessary to address the legal conclusion that the obligation constituted an "educational benefit" or an "educational benefit overpayment." However, this Court generally follows the principle that a bankruptcy court may not presume that Congress "intended" to insert commas into a clause, and a bankruptcy court must interpret statutes as they are written. As written, "educational benefit overpayment" appears to refer to circumstances where the institution extending a loan grants the recipient more funds than are necessary to pay educational expenses. In such a case, if the recipient keeps the funds and applies them to noneducational purposes, the recipient would still be liable for the total amount of the loan.

benefit" or "educational benefit overpayment," the debt is dischargeable.

Conclusion

The obligation that the debtor allegedly owes to CCS, as the assignee of the College, is dischargeable. The debtor left the College after three days because she did not meet the prerequisite requirements for admittance to the College. Since the College did not enter into an express or implied agreement with the debtor concerning tuition, there was no "educational loan." Since the debtor did not qualify as a student, she did not receive an "educational benefit" or an "educational benefit overpayment." Under these circumstances, the alleged debt is dischargeable because it is not a nondischargeable Section 523(a)(8) obligation.

Separate journal entry to be entered.

DATED: August 29, 1994

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

14	QUINN, DOUGLAS	341-0216
37	FOX, WANDA	8-605-665-6781

Copies mailed by the Court to:
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
LESLIE G. SMITH,) CASE NO. BK93-80482
) A93-8139

DEBTOR(S))
)
CREDIT COLLECTION SERVICES,) CH. 7
INC., Assignee of Mount)
Marty College, A Corporation,) Filing No.
Plaintiff(s))
vs.) JOURNAL ENTRY
)
LESLIE G. SMITH a/k/a)
LES SMITH and FAITH ANN SMITH,)

Defendant(s)) DATE: August 29, 1994

Before a United States Bankruptcy Judge for the District of Nebraska regarding adversary complaint.

APPEARANCES

Wanda Howey-Fox, Attorney for debtor/defendant
Douglas E. Quinn, Attorney for plaintiff

IT IS ORDERED:

Judgment is entered in favor of debtor/defendant and against plaintiff. The alleged debt for college tuition is discharged. See memorandum this date.

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

14 QUINN, DOUGLAS 341-0216
37 FOX, WANDA 8-605-665-6781

Copies mailed by the Court to:
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.