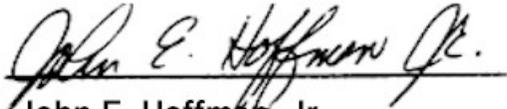


**This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.**

**IT IS SO ORDERED.**

  
John E. Hoffman, Jr.  
United States Bankruptcy Judge

**Dated: March 02, 2005**

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**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT COLUMBUS**

*In re:* :  
 :  
 Cynthia Ann Smith, : Case No. 79-21866  
 : Chapter 7  
 : Judge Hoffman  
 *Debtor.* :

**ORDER GRANTING IN PART AND DENYING IN PART  
MOTION FOR ORDER REQUIRING U.S. DEPARTMENT  
OF EDUCATION TO APPEAR AND SHOW CAUSE WHY IT IS  
NOT IN VIOLATION OF PERMANENT INJUNCTION  
OF DISCHARGE, AND FOR SANCTIONS**

This contested matter came before the Court on February 15, 2005, for hearing (“Hearing”) on the Motion for Order Requiring U.S. Department of Education to Appear and Show Cause Why it is Not in Violation of Permanent Injunction of Discharge, and for Sanctions (“Motion”)(Doc. 8) filed by Cynthia Ann Smith aka Cynthia Ann Joseph (“Debtor”),<sup>1</sup> the response (“Response”)(Doc. 12) filed by the United States of America on behalf of the U.S. Department of Education

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<sup>1</sup> On December 2, 2004, the Court reopened this case to allow the Debtor to file the Motion (Doc. 6).

(“USDOE”) and the Memorandum in Support of Discharge of Student Loans (“Reply”)(Doc. 13) filed by the Debtor. Appearing at the Hearing were the Debtor, Attorney Pamela N. Maggied, on behalf of the Debtor, and Andrew M. Malek, Assistant United States Attorney, on behalf of the USDOE.

Having considered the Motion, Response, Reply, the arguments and representations of counsel, and the relevant case law, the Court made oral findings of fact and conclusions of law at the Hearing, which are incorporated in this order by reference. *See* transcript entered February 24, 2005 (“Hearing Transcript”)(Doc. 15).

The Court finds that the USDOE violated the discharge injunction that arose when the Debtor was granted a discharge on December 11, 1979 (*see* 11 U.S.C. § 524(a)) by continuing to demand payment of the Debtor’s discharged student loans and applying the Debtor’s income tax refunds for tax years 2001, 2002 and 2003 to her discharged student loan obligations. *See* Hearing Transcript at 17-18. Accordingly, the Court **GRANTS** the Motion in part and **ORDERS** the USDOE to (1) cease all further collection activity with respect to the Debtor’s discharged student loan debts and (2) repay the Debtor an amount equal to the sum of her income tax refunds for tax years 2001, 2002 and 2003, with interest. *Id.*

The Court further finds that the dischargeability of guaranteed student loan obligations of debtors who filed Chapter 7 bankruptcy petitions during the period from November 6, 1978 to October 1, 1979 is an issue that has produced a split in the case law.<sup>2</sup> *Id.* Because USDOE acted in reliance upon a line of authority holding that such obligations are nondischargeable, the Court finds that the collection activity undertaken by the USDOE does not constitute grounds for

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<sup>2</sup> Debtor filed her Chapter 7 petition on June 29, 1979.

imposition of sanctions. *Id.* The Court, therefore, **DENIES** the Debtor's Motion insofar as it requests an award of attorney fees. *Id.*

Within ten (10) days of filing any notice of appeal under Fed. R. Bankr. P. 8001(a), the appellant shall note in the designation of items under Fed. R. Bankr. P. 8006 that the Hearing Transcript will be included in the record on appeal.

**IT IS SO ORDERED.**

Copies to:

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