BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

BRITTANY MCGAHEE,
Petitioner,

v.

GEORGIA STUDENT FINANCE AUTHORITY,
Respondent.

Docket No.: 2223216
2223216-OSAH-GSFA-ITRS-44-Boggs

Agency Reference No.: L0249146672

FINAL DECISION

I. INTRODUCTION

The Georgia Student Finance Authority ("GSFA" or "Respondent") has initiated a setoff of Petitioner Brittany McGahee's state income tax refund, to be paid toward a purported student-loan debt. The Petitioner has appealed the GSFA's action. A hearing took place on May 12, 2022, in Atlanta, Georgia, before the undersigned administrative law judge. The Petitioner appeared and represented herself. Representing the GSFA was Brian Annino, Esq.

Having considered the evidence in the record and the arguments of the parties, the Court hereby **AFFIRMS** the GSFA's action in this matter.

II. FINDINGS OF FACT[1]

Petitioner's Loan and Promissory Note

1.

The Petitioner is the borrower of a Student Access Loan ("SAL"), which is a type of student loan provided through the GSFA pursuant to Subpart A of Article 7 of Chapter 3 of Title 20 of the Georgia Code. (Testimony of Benita Jorgensen; Ex. R-A.)

[1] On a motion by the Respondent, it is **HEREBY ORDERED** that Exhibits R-A, R-B, and R-C are **PLACED UNDER SEAL**, to protect the Petitioner's personal identifying information contained therein.

2.

In October 2011, the Petitioner signed a promissory note for a $2,500.00 SAL from the GSFA for the 2011-2012 academic year ("2011 Promissory Note"). As part of its terms, the note specified it is governed by the laws of the state of Georgia. Also, in providing her notarized signature on the note, the Petitioner agreed to the following statement: "I represent and warrant that I have read and understand the Note in its entirety." (Testimony of Benita Jorgensen; Ex. R-A.)

3.

In signing the 2011 Promissory Note, the Petitioner agreed to a 1% annual interest rate for the SAL, which would be paid while she was enrolled in her postsecondary school. The Petitioner also agreed to a monthly repayment schedule over a period of 10 years. The repayment period would begin once the Petitioner completed her courses, graduated, or otherwise was no longer enrolled in her postsecondary school. The 2011 Promissory Note also laid out grounds for deferrals or forbearance of loan payments, such as the Petitioner's subsequent enrollment in a postsecondary institution, unemployment, or economic hardship. (Testimony of Benita Jorgensen; Ex. R-A.)

4.

Under the section titled "Delinquency, Default and Remedies," the 2011 Promissory Note had the Petitioner agree to the following, in relevant part:

> If I fail to make any payment of principal or interest or both when due . . . and such failure continues for ***ninety (90) days or more***, . . . then in any such event (each such event called a "Default") notwithstanding any other terms of this Note, the entire principal amount of this Note outstanding, together with all accrued and unpaid interest thereon, at the option of the [GSFA] and ***without notice to me***, ***shall become immediately due and payable and may be collected forthwith***, together with all costs of collection, including reasonable attorneys' fees, if collected by or through an attorney, and the disbursement of the undisbursed

> portion of the principal amount hereof, if any, shall be cancelled. Nothing contained in this Note shall give me any right to cure or reinstate the original payment terms of this Note in the event that the [GSFA] elects to accelerate the maturity of this Note pursuant to the terms and conditions of this paragraph . . . .

(Ex. R-A.) (Emphasis added.)

5.

The 2011 Promissory Note also contained a "non-waiver" clause, which stated as follows:

> Neither the failure of the [GSFA] to exercise any of its options or any other rights hereunder nor indulgence granted by the [GSFA] from time to time shall in any event be considered to constitute a waiver thereof or a bar to the exercise of any of such options or rights at a later date or to estop the [GSFA] from exercising any such options or rights. All rights and remedies of the [GSFA] hereunder shall be cumulative and may be pursued singly, successively or together, at the option of the [GSFA]. The acceptance by the [GSFA] of any partial payment shall not constitute a waiver of any Default or of any of the [GSFA's] rights under this Note.

(Ex. R-A.)

6.

In addition to her signature, the Petitioner included contact information for herself on her 2011 Promissory Note, including her permanent address, her address while at school, her phone numbers, and her email address. The note also directed the Petitioner to notify the GSFA "immediately" of any changes to her name, address, phone number, email address, banking information, school of attendance, and enrollment status. (Testimony of Benita Jorgensen; Ex. R-A.)

Petitioner's Borrower History

7.

Benita Jorgensen, vice president of financial operations for the GSFA, testified at the hearing on behalf of the Respondent. She presented records of the Petitioner's SAL history, which stretches back to October 2011. According to these records and Ms. Jorgensen's testimony:

- The Petitioner graduated or separated from her postsecondary school in May 2012. Accordingly, the repayment on her SAL began after a six-month grace period. The payments were set at $25.00 monthly starting December 15, 2012.

- From December 2012 through March 2020, the GSFA recorded two payments made toward the SAL. The first payment of $114.00, made on or around June 15, 2014, is recorded as being returned or canceled due to "insufficient funds," and Ms. Jorgensen confirmed in her testimony the payment had been removed. The second payment of $63.00, made on or around February 26, 2020, was applied to the loan balance.

- Also throughout this roughly seven-year period, the GSFA sent the Petitioner multiple notices of past-due payments on her account.[2] The Petitioner, in turn, was granted several instances of forbearance or deferment during this period.[3]

- In April 2020, the GSFA enacted a 60-day forbearance on the Petitioner's SAL due to the emerging COVID-19 pandemic. Beginning in June 2020, the monthly payments restarted at $34.00. The Petitioner also was "brought current," meaning she no longer was considered delinquent or in default on her SAL.

- Between July 2020 and March 2021, there are no records of payments by the Petitioner toward her SAL balance. The GSFA mailed out past-due notices in July, August, and September of 2020; however, by October, the Petitioner's address was placed in "skip status" because mail addressed to the Petitioner had been returned undelivered. "Skip status" means the notices are not printed and mailed out, due to the absence of a valid address. The GSFA also attempted contacting the Petitioner by phone and continued to utilize Lexis Nexis to search for updates on her contact information, with no success.

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[2] These notices include, but are not limited to, the ones sent in January 2014 (180 days past due); October 2016 (271-day default notification); and April 9, 2020 (180 days past due). (Ex. R-C.)

[3] For example, a forbearance period is recorded in 2014 and 2016 for financial issues, while an unemployment deferment is recorded for 2017. (Ex. R-C.)

- On or around February 10, 2021, the GSFA considered the Petitioner's SAL loan to be in default, following 271 days of nonpayment. The letter notifying the Petitioner of this default was not printed and mailed because her account remained in "skip status" for lack of a valid address.

- On or about May 26, 2021, the Petitioner's SAL debt was assigned to a collection agency. Again, the letter was not printed because the Petitioner remained in "skip status"

- In June 2021, the GSFA attempted to call the Petitioner and again utilized Lexis Nexis to search for updated contact information.

(Testimony of Benita Jorgensen; Exs. R-B, R-C.)

8.

By March 2022, the Petitioner's SAL loan balance, including both principal and interest, totaled more than $3,000.00. (Ex. R-C.)

9.

On or around March 9, 2022, the GSFA recorded the setoff from the Petitioner's state tax refund, in the amount of $1,772.00. If the setoff is applied,[4] the Petitioner's SAL obligation would be lowered to $1,646.01 in principal and roughly $0.04 in interest. (Testimony of Benita Jorgensen; Ex. R-B.)

Testimony of Ms, Jorgensen

10.

Ms. Jorgensen testified at the hearing that, pursuant to GSFA policy, SAL borrowers go into default after 271 days—or approximately nine months—of nonpayment. Following 360 days of nonpayment, the SAL debt is sent to a collection agency. Once a borrower enters default on a GSFA loan, she loses eligibility for any deferment or forbearance. Additionally, the GSFA sends the Georgia Department of Revenue a list of defaulters, so that any state tax refund owed

[4] Under the controlling law, the GSFA is to hold the disputed setoff funds in an escrow account, pending a final determination in this matter. See O.C.G.A. §§ 48-7-164(d), 48-7-166(a)(1).

to a defaulter can be set off and applied to the outstanding loan balance. The setoff only applies to those defaulters who have not made other arrangements with the GSFA to pay their outstanding balances. (Testimony of Benita Jorgensen.)

11.

Ms. Jorgensen further testified that the GSFA always tries to contact the borrower, both before and after sending a student-loan debt to a collection agency. However, she stated it is up to the borrower to notify the GSFA of any change in status that would be possible grounds for deferment, including whether the borrower has gone back to school. (Testimony of Benita Jorgensen.)

12.

Additionally, Ms. Jorgensen testified it is the GSFA's standard practice to have borrowers confirm their contact information every time they are in touch with the authority. The records for the Petitioner's SAL obligation bear that out, as they show the Petitioner confirming or updating her information multiple times since 2012.[5] Ms. Jorgensen also explained that, as part of its collection activities, the GSFA will attempt to get an updated address for the borrower via Lexis Nexis. However, Ms. Jorgensen asserted it is ultimately the borrower's responsibility to notify the GSFA of any change in address. (Testimony of Benita Jorgensen.)

Testimony of Petitioner

13.

At the hearing, the Petitioner testified that she is "in agreeance with the loan itself," that she signed the Promissory Note, and that the note is valid under Georgia law. However, she disagreed with its "default status." She asserted the 2011 Promissory Note contains

[5] Such verifications occurred in March 2016, June 2016, July 2017, April 2019, February 2020, March 2020, and March 2022. (Ex. R-C.)

"inconsistencies" on the dates when the SAL went into default. On cross-examination, the Petitioner testified she could not recall whether she had made any payments on her loan within the past 271 days. (Testimony of Petitioner.)

III. CONCLUSIONS OF LAW

1.

The Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2.

The GSFA was created by the Georgia General Assembly "to improve higher educational opportunities by providing educational scholarship, grant, and loan assistance and to further other public purposes by loan forgiveness programs in specified circumstances . . . ." O.C.G.A. § 20-3-311(b); see also O.C.G.A. §§ 20-3-312(1), 20-3-313. The GSFA is assigned by statute to the Georgia Student Finance Commission. O.C.G.A. § 20-3-324; see also O.C.G.A. §§ 20-3-233.

3.

One type of assistance the GSFA offers—as described in Subpart A of Article 7 of Chapter 3 of Title 20 of the Georgia Code—is a direct loan to students who are legal Georgia residents. O.C.G.A. § 20-3-395.1(a). These loans are subject to a 1% annual interest rate. Id. § 20-3-395.1(b). The repayment period is 10 years, though the GSFA may provide for deferral and forbearance of payments. Id. § 20-3-395.1(c).

4.

The GSFA is authorized to establish a repayment schedule for its direct loans. O.C.G.A. § 20-3-395.3(a). Students are required to pay accrued interest annually while attending a postsecondary institution. Id. However, payment on principal does not begin until one of the following occurs: (a) the student completes her course of study; (b) the student graduates; (c) one calendar year has passed after the student has borrowed the maximum $40,000; or (d) the student has not been enrolled in an eligible postsecondary institution for two academic quarters or two academic semesters. Id.; see also O.C.G.A. § 20-3-395.1(f).

5.

If a borrower owes an outstanding student-loan debt to the GSFA that is more than $25.00, the GSFA is authorized by law to submit that debt to the Georgia Department of Revenue, so that the latter agency can "set off any refund" payable to the borrower against the GSFA debt. O.C.G.A. § 48-7-163(a); see also id. §§ 48-7-161(1)(B), 48-1-2(6).[6] This submission for setoff can occur "except in cases where the validity of the debt is legitimately in dispute, an alternate means of collection is pending and believed to be adequate, or such collection would result in a loss of federal funds or assistance." Id. § 48-7-163(a).

6.

The GSFA's authorization to apply the setoff is subject to the taxpayer's right to "contest[] the setoff or the sum upon which the setoff is based," pursuant to a hearing before this Court to determine "whether the setoff is proper or the sum is valid." O.C.G.A. § 48-7-165(a); see also O.C.G.A. § 50-13-41(a).

[6] A "debt" includes "[a]ny liquidated sum due and owing any claimant agency, which sum has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for the sum." O.C.G.A. §§ 48-7-161(3)(A). A "debtor," in turn, refers to "any individual owing money to or having a delinquent account with any claimant agency or court, which obligation has not been adjudicated as satisfied by court order, set aside by court order, or discharged in bankruptcy." Id. § 48-7-161(4).

7.

In the instant case, the evidence shows that the Petitioner had taken out a direct loan, or SAL, from the GSFA; that the loan called for annual interest payments; that monthly payments began in 2012; that she remained behind in those payments from June 2020 to February 2021, when she went into default; that she has not made any payments on the loan since going into default in February 2021; that she was not in forbearance or deferment prior to going into default; and that, by the time of the tax-refund intercept, she owed more than $25.00 to the GSFA and did not have a separate repayment agreement in place. Given these findings, the GSFA had proper authority to set off the Petitioner's state-tax refund to pay off her outstanding SAL debt. See O.C.G.A. § 48-7-163(a).

8.

To the extent the Petitioner claims the setoff was improper because the GSFA was not "justified" in placing her loan in default status, such argument is without merit. First and foremost, the overwhelming evidence shows the Petitioner has not made any of the required payments toward her SAL loan since the COVID-19 deferment ended around June 2020. This places her well past the 90 days for default as stated in the 2011 Promissory Note and the 271 days for default under the GSFA's internal policy. Second, the promissory note specifies the GSFA was authorized to collect full repayment of the principal and interest upon a default, "without notice" to her. Despite this, the record clearly shows the GSFA attempted to notify the Petitioner about the default and the debt's assignment to the collection agency, but it was stymied by the lack of a valid mailing address. The GSFA went so far as to attempt finding a new address via Lexis Nexis or to contact her by phone. Thus, if the Petitioner did not receive notice about the loan going into default—as she appears to assert—it was not for lack of trying

on the GSFA's part. More to the point, it was the Petitioner's responsibility—as stated in the 2011 Promissory Note—to keep the GSFA notified as to any changes in her address or other contact information.

9.

Lastly, the Court is not persuaded by the Petitioner's assertion that "inconsistencies" about the date of default would render the setoff invalid. It is true the 2011 Promissory Note states the Petitioner would be in default if she failed to make a payment for 90 days or more, while Ms. Jorgensen testified the GSFA will wait 271 days before placing a loan in default status. However, the GSFA is authorized by law to "adopt . . . policies necessary, appropriate, or convenient" to administer the SAL program. See O.C.G.A. § 20-3-316(a)(1)(A). In this instance, Ms. Jorgensen's credible testimony establishes that the GSFA has adopted the policy of waiting 271 days, or approximately nine months, before defaulting a borrower.[7] Additionally, the 2011 Promissory Note's "non-waiver" clause makes clear that the GSFA's failure to exercise its rights under the note—including to default the Petitioner immediately after 90 days—is not considered a waiver of those rights; rather, the option to pursue default at a later date remains open. The GSFA's decision to exercise the default option at 271 days, therefore, is not inconsistent with the terms of the promissory note.[8]

10.

Ultimately, the Petitioner's arguments fall short because she is bound by the terms of the 2011 Promissory Note, which is "an unconditional contract whereby the maker engages that he will pay the instrument according to its tenor." L.D.F. Family Farm, Inc. v. Charterbank, 326

[7] The written policy can be found on the GSFA's website, *https://gsfc.georgia.gov/regulations/regulations-2021-2022* (last accessed June 6, 2022). The regulation is under "Student Access Loan," Section 5112.7(2).

[8] Furthermore, as the GSFA policy gives a longer period for default than the 90-day period listed in the promissory note, exercising this policy appears to favor the Petitioner, rather than prejudice her.

Ga. App. 361, 363-364 (2014). See also Brinson v Martin, 220 Ga. App. 638, 639 (1996) (holding that "one who signs a contract is presumed to know its contents") (citation and quotation omitted). Based on the terms of the promissory note and the controlling law, the Court concludes the GSFA has proved, by a preponderance, that the Petitioner's state-tax refund is subject to setoff.

IV. DECISION

For the reasons stated above, the GSFA's interception and setoff of the Petitioner's 2021 state-tax refund in the amount of $1,772.00 is hereby **AFFIRMED**.

SO ORDERED, this 9th day of June, 2022.

Lisa Boggs

Lisa Boggs
Administrative Law Judge