

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF RHODE ISLAND

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In re: :

JOHN M. MOLLICA : BK No. 03-12610  
Debtor : Chapter 7

JOHN M. MOLLICA :  
Plaintiff :

v. : A.P. No. 03-1055

UNITED STATES DEPARTMENT OF :  
EDUCATION :

Defendant :

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**ORDER VACATING BENCH RULING AND DISMISSING COMPLAINT**

Heard on November 10, 2004, on the Debtor's Complaint to have his student loan obligation to the U.S. Department of Education declared dischargeable, pursuant to 11 U.S.C. § 523.

The Debtor presented his case pro se, in a long and drawn out manner, but when all was eventually said and done Mr. Mollica had fully presented his story, beginning with a head injury in 1973, as well as his past, present, and probable future inability to earn sufficient income to meet his and his family's needs, and still pay off his student loans.

At the conclusion of the hearing, because the Debtor had not met the statutory burden to entitle him to a discharge at this time, it was ordered that this matter be continued one year for review of the Debtor's earning capacity and status of his overall health issues, as well as his progress, if any, in obtaining full time employment with benefits.

Upon reflection, however, and having since come to the conclusion that the evidence taken on November 10 was incorrectly interpreted, I now find that when it is reviewed more carefully, and in the bright light of hindsight, the Debtor's case is without merit. Also influential in this Court's action regarding the November 10, 2004 bench ruling, is its reexamination of the summation of the U.S. Department of Education, which is now adopted, incorporated herein by reference, attached as Exhibit A, and to which I should have given more deference the first time around. *Mea culpa.*

Therefore, upon sua sponte reconsideration, and having now decided that this Court's November 10, 2004, order continuing the matter for one year was rendered hastily and improvidently,

BK No. 03-12610; A.P. No. 03-1055

said ruling is hereby VACATED and the Complaint is DISMISSED, on the ground that the Debtor has not established the elements required to obtain a discharge of his debt to the U.S. Department of Education under 11 U.S.C. § 523.

Enter judgment consistent with this order.

Dated at Providence, Rhode Island, this 21<sup>st</sup> day of December, 2004.



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Arthur N. Votolato  
U.S. Bankruptcy Judge

Entered on docket: 12/21/04