

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>ROBERT P. TUERK,</b>	:	<b>NO. 05-CV-06088</b>
<b>Defendant</b>	:	

**MEMORANDUM OPINION**

**TIMOTHY R. RICE**  
**U.S. MAGISTRATE JUDGE**

**March 20, 2007**

Plaintiff, the United States of America, moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. Plaintiff’s motion is unopposed by the defendant, Robert Tuerk,<sup>1</sup> an attorney who the government alleges has defaulted on student loans in its Federal Family Education Loan Program (“FFELP”). There are no factual disputes and summary judgment is appropriate as a matter of law. Plaintiff’s motion is granted for the reasons that follow.

**SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). I must resolve all justifiable inferences in the non-moving party’s favor. Sommer v. The Vanguard Group, 461 F.3d 397, 403 (3d Cir. 2006). The moving

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<sup>1</sup> Tuerk’s summary judgment motion was due February 23, 2007, but he declined to file one. Following plaintiff’s motion for summary judgment, Tuerk’s response was due March 16, 2007, but he did not file a response. I therefore deem plaintiff’s motion unopposed.

party bears the burden of showing the record reveals no genuine issue as to any material fact and that they are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Once the moving party has met its burden, the non-moving party must go beyond the pleadings to set forth specific facts showing that there is a genuine issue for trial. Id. However, the party opposing summary judgment “must do more than simply show that there is some metaphysical doubt as to the material facts;” it must produce competent evidence supporting opposition. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). I may not consider evidence on a motion for summary judgment that would not be admissible at trial. Pamintuan v. Nanticoke Mem’l Hosp., 192 F.3d 378, 387 n.13 (3d Cir. 1999).

To defeat a motion for summary judgment, factual disputes must be both material and genuine. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue is “material” if it is predicated upon facts that are relevant and necessary and that may affect the outcome of the matter pursuant to the underlying law. Id. An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving parties. Id. at 248-49. Summary judgment is mandated against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, because such a failure as to an essential element necessarily renders all other facts immaterial. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Thus, if there is only one reasonable conclusion from the record regarding the potential verdict under the governing law, summary judgment must be awarded to the moving party. Anderson, 477 U.S. at 250.

## DISCUSSION

1. Under FFELP, lenders use their own funds to make loans to students. These loans are

guaranteed by state agencies or non-profit organizations and are reinsured by the Department of Education (“DOED”). In the event of a borrower’s default on a loan, the guaranty agency pays on the claim to the lender and takes assignment of the loan. The guaranty agency then pays the default claim and files a claim with DOED. DOED reimburses the guaranty agency any losses, and the guaranty agency tries to collect the debt from the borrower. The guaranty agency must use its own dunning letters, wage garnishment procedures, litigation, and collection efforts. If the guaranty agency obtains no payment, the loan may be assigned to DOED. (Pl. Br. 1-2).

2. Tuerk defaulted on two student loans under FFELP. He was required to begin repayment within six months from the date on which he ceased to be enrolled on at least a half time basis at a higher education institution. The first loan was made by Norwest Bank South Dakota, N.A., guaranteed by Northstar Guarantee, Inc., and reinsured by DOED. The second loan was made by Mellon Bank, West, guaranteed by the Pennsylvania Higher Education Assistance Agency, and reinsured by DOED. DOED took assignment of the loans on February 16, 2007. (Pl. Br. 3-5).

3. The principal balance of the first loan, a Supplemental Loan for Students (“SLS”) disbursed on February 16, 1988, is \$3,156.01. The principal balance of the second loan, a Consolidation Loan disbursed on March 13, 1991, is \$53,045.31. Thus, Tuerk is indebted in the total principal amount of \$56,201.32, plus interest in the amount of \$73,378.96 calculated to January 26, 2007 for a total of \$129,580.28. Interest continues to accrue on the unpaid principal balances at the combined current rate of \$13.80 per day.

4. On November 21, 2005, plaintiff, on behalf of its agency, DOED, filed suit seeking recovery of Tuerk’s defaulted loans. In his answer, Tuerk claimed the suit was barred by the

doctrine of laches and the plaintiff had failed to exercise due diligence in its collection efforts as mandated by 34 C.F.R. 682.411 and 34 C.F.R. 682.507.

5. In 1991, Congress eliminated all statutes of limitations and laches defenses for collection of student loans. 20 U.S.C. § 1091a. Section 1091a states that the purpose of the subsection is to provide that the repayment of loans are enforced regardless of any federal or state statutory, regulatory, or administrative limitation which might otherwise “terminate the period of time within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated.” Id.; see United States v. Lawrence, 276 F.3d 193, 196 (5th Cir. 2001) (“§ 1091a also extends to eliminate the equitable defense of laches”); Frew v. Van Ru Credit Corp., 2006 WL 2261624 \*4 (E.D. Pa. Aug. 7, 2006) (Buckwalter, J.).

6. Congress intended 20 U.S.C. § 1091a to have retroactive effect. See United States v. Phillips, 20 F.3d 1005, 1007 (9th Cir. 1994) (Congress made the Higher Education Technical Amendments of 1991 effective such as to revive all actions which would have otherwise been time-barred); see also Frew, 2006 WL 2261624 at \*4; United States v. Doan, 1997 WL 83738 \*1 (E.D. Pa. Feb. 25, 1997) (Katz, J.).

7. Even if laches remained a valid defense in § 1091a suits, it is inapplicable here because the government is enforcing its rights to collect on defaulted student loans. See United States v. Menatos, 925 F.2d 333, 335 (9th Cir. 1991) (citing United States v. Summerlin, 310 U.S. 414, 416 (1940)); Doan, 1997 WL 83738 at \*2.

8. Finally, 34 C.F.R. 682.411 and 34 C.F.R. 682.507 are inapplicable here. Sections 682.411 and 682.507 do not govern DOED actions, but provide the lender rules for due diligence in collecting loans.

9. Accordingly, plaintiff's claim is not barred by any statute of limitations, defense of laches, or lack of due diligence on the part of DOED.

#### CONCLUSION

For the foregoing reasons, plaintiff's motion for summary judgment is granted. Judgment is entered in favor of the plaintiff and against the defendant in the amount of \$129,580.28, plus interest that accrued from January 26, 2007 through March 19, 2007 at the daily rate of \$13.80, with interest on the judgment and costs.

BY THE COURT:

\s\ TIMOTHY R. RICE  
TIMOTHY R. RICE  
U.S. MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA,**     :   **CIVIL ACTION**  
    **Plaintiff**                     :  
                                      :  
    **v.**                               :  
                                      :  
**ROBERT P. TUERK,**                 :   **NO. 05-CV-06088**  
    **Defendant**                    :

**AMENDED ORDER**

AND NOW, this 21st day of March, 2007, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

1. Plaintiff's motion for summary judgment is GRANTED;
2. Judgment is entered in favor of plaintiff the United States of America in the amount of \$129,580.28, plus interest that accrued from January 26, 2007 through March 19, 2007 at the daily rate of \$13.80, with interest on the judgment and costs.
3. This is a final judgment and the Clerk of Court is instructed to close this matter for statistical purposes.

BY THE COURT:

\s/ TIMOTHY R. RICE  
TIMOTHY R. RICE  
U.S. MAGISTRATE JUDGE