

Law School Debt Leads Some Grads to Consider Bankruptcy



As many college graduates struggle to pay back student loans in an era of stagnant wage growth and bleak hiring prospects, a growing number have turned to bankruptcy protection as a last resort.

Law school graduates are no exception. According to a recent study by The American Lawyer, an affiliate of the Connecticut Law Tribune, median law school debt between 2008 and 2012 increased by 54 percent—from \$83,000 to \$128,000. Enrollment in programs aimed at deferring that debt increased 40 percent over the past year.

As far as strategies go, relying on a bankruptcy hardship claim to get out of paying a student loan is a Hail-Mary at best, and not a very effective one. In a recent decision by the U.S. Court of Appeals for the Second Circuit, a Greenwich lawyer learned how difficult it is to prove that sufficient hardship.

Part of the difficulty, bankruptcy lawyers say, is that three prongs of a test established in a 1987 Second Circuit ruling, called *Brunner v. New York Higher Education Services Corp.*,

must be met. Under what has become known as the *Brunner* test, a debtor can get rid of student loan debt, including law school debt, if they show the following:

First, that he or she has made "good faith efforts" to repay the loans; that the debt is so great that they cannot maintain a "minimal" standard of living; and finally, circumstances exist which make it unlikely they will be able to make payments for a "significant portion of the repayment period."

In the recent case of *Desormes v. Charlotte School of Law*, the federal appeals court affirmed the earlier decision of a bankruptcy judge in Bridgeport, who found Desormes failed to meet the burden to be relieved of his law school debt.

Desormes attended the Charlotte School of Law in North Carolina from 2007 to 2010, incurring over \$100,000 in student loan debt to attend a school which was not then accredited by the American Bar Association. In January 2010, Desormes filed for bankruptcy protection, representing himself in court. Among his many motions, Desormes asked the law school to admit that it "targets young, ambitious and naïve individuals," and that it failed to disclose its accreditation status to prospective students.

When those claims didn't get him anywhere, Desormes turned to the hardship argument.

As Bridgeport-based U.S. Bankruptcy Judge Alan Shiff wrote in the original decision back on Sept. 18, 2012, Desormes "failed to prove .. any actual damages and an undue hardship warranting [the ability] to have his loan discharged."

The Second Circuit last month agreed that decision followed the law. "We have considered Desormes arguments and find them without merit," the court found.

Eugene Melchionne, a bankruptcy lawyer based in Waterbury, said the *Brunner* decision has made it difficult for many law school graduates who can't pay off their student loans. "Bankruptcy can help, but it's not the solution," he said. "One thing [filing for bankruptcy] dit can do is give you a stay so you can negotiate a solution."

Joshua Cohen, a Cromwell lawyer, has built a practice around helping young people caught in

the student loan debt crisis. He helps clients sue debt collectors and lenders for law violations relating to student loans. He has also helped students, including law school grads, enter repayment programs, or defer their loans.

"This is very similar to the sub-prime mortgage lending crisis, where the banks were giving loans to people that couldn't actually afford them," Cohen said. "Fortunately, those people could file for bankruptcy, surrender their house and walk away. But people with private student loans are not allowed to do that. Congress needs to change the bankruptcy law so these are dischargeable."

At many law schools students are advised on how to avoid taking on too much debt, and how to access programs that ease the repayment process. In recent years, law schools have promoted federal debt forgiveness programs as a solution to rising student loan obligations. One option is income-based repayment, which allows borrowers to pay back a percentage of what they can afford over time.

Under IBR, lawyers who can't get jobs that pay them enough to cover their loans are permitted to make monthly installments totaling 10 percent of their discretionary income, which is determined using a formula based on the federal poverty index. Outstanding balances for those who participate in the program is forgiven after 10 years for those who work in the public sector, and forgiven after 20 years for lawyers in the private sector.

There are tax implications. On the year that the debt is forgiven, the amount deferred is recorded as taxable income, resulting in a payment of typically thousands of dollars owed to the Internal Revenue Service.

Robyn Frick, the director of Student Finance at the University of Connecticut School of Law, said school officials encourage students to "only borrow what they need," and to keep expenses low.

The school offers counseling on finances and budgeting. "We'll have a program to tell people how they can pay off their loans, and 20 people will RSVP, but only two or three show up," Frick said. "The apathy is incredible, that's just my observation."

She is hoping to work with the Student Bar Association on the next event. "If a peer group is involved," she said, "it might attract their peers."•