U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
MARK RANDALL BOWLES, d/b/a THE PARTY PROFESSIONALS	§	**Case No. 04-38098 HDH-7**
	§	
Debtor.	§	

MARK RANDALL BOWLES	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Adversary No. 04-3450**
	§	
TEXAS GUARANTEED STUDENT LOAN CORPORATION	§	
	§	
Defendant.	§	

MEMORANDUM OPINION ON DISCHARGEABILITY COMPLAINT

On February 11, 2005, the Court considered the complaint filed by the Debtor, Mark Randall Bowles ("Plaintiff" or "Debtor"), against Texas Guaranteed Student Loan Corporation ("Defendant"). In the complaint, Plaintiff seeks to discharge approximately $36,000.00 in his student loans.

The Debtor bears the burden of proof in the adversary proceeding. The burden is quite high and is set out in *United States Dept. of Educ. v. Gerhardt (In re Gerhardt)*, 348 F.3d 89 (5th Cir. 2003), wherein the Fifth Circuit adopted the so-called *Brunner* test for purposes of evaluating a complaint, such as the instant one, brought under 11 U.S.C. § 523(a)(8) to discharge a student loan.

In this Circuit, a debtor must prove:

> (1) that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for [himself] and [his] dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans. *Brunner*, 831 F.2d at 396.

In re Gerhardt, 348 F.3d at 91.

Gerhardt sets out a high standard for debtors who seek to discharge student loans in the Fifth Circuit. In the present case Debtor has met two, but not all three of the required elements.

The undisputed testimony of the Debtor, along with the exhibits that he offered clearly indicate that this Debtor, in good faith, has attempted to negotiate and repay his student loans for a long period of time.

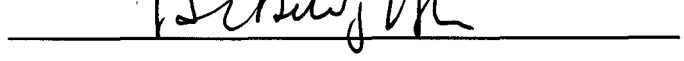
In addition, the schedules and the other financial information that the Debtor offered into evidence, including his tax returns, suggest that he is living fairly modestly and may not be able to maintain a minimal standard of living if forced to repay his student loans.

However, as in *Gerhardt*, the Debtor has not met the "demanding requirement" that the debtor prove a total incapacity in the future to pay his debts for reasons not within his control. *See In re Gerhardt*, 348 F.3d at 92 (quoting *In re Brightful*, 267 F.3d 324, 327 (3rd Cir. 2001)). "[P]roving that the debtor is 'currently in financial straits' is not enough. Instead, the debtor must specifically prove 'a total incapacity ... in the future to pay [his] debts for reasons not within [his] control.'" *Id.* (quoting *In re Faish*, 72 F.3d 298, 307 (3rd Cir. 1995) (quoting *In re Rappaport*, 16 B.R. 615, 617 (Bankr. D.N.J. 1981)). Though the Debtor offered evidence as to his illness and as to his present financial situation, he did not prove by a preponderance of the evidence the high standard required of total incapacity. In fact, the way the Debtor handled the present adversary,

without a lawyer, suggests that he actually has the potential to repay his student loans. Debtor prepared and presented his case well. He collected and offered relevant exhibits into evidence. He testified that he was a problem solver. He is articulate and makes a nice presentation in court. Debtor was polite and appeared to possess good people skills. His present occupation, that of an event planner, requires these characteristics, which Debtor clearly possesses. While Debtor indicated that he does not really want to work for someone else and prefers to run his own business from his house, Debtor's talents suggest that he would have a number of possible employment opportunities, like the debtor in *Gerhardt*. Thus, the second prong of the *Gerhardt* test is not met.

Accordingly, Judgment will be entered for the Defendant.

SIGNED: FEB 15 2005



Harlin D. Hale
United States Bankruptcy Judge