

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re: Case No. 1-02-19260-dem

ROBERT J. HURD Chapter 7

Debtor.

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MARIANNE HURD, Adv. No. 1-02-01626-dem

Plaintiff,

-against-

ROBERT J. HURD,

Defendant.

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**DECISION AND ORDER AFTER TRIAL**

Appearances:

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DENNIS E. MILTON  
United States Bankruptcy Judge

This is an adversary proceeding in which the plaintiff, Marianne Hurd (“Hurd”) seeks to have her claim of \$121,823.00 (the “Hurd Claim”) against the defendant, Robert J. Hurd, the debtor herein, deemed non-dischargeable under Section 523(a)(5) of Title 11 of the

United States Code (the “Bankruptcy Code”). Hurd contends that the Hurd Claim, consisting of \$70,000 denominated as unpaid “nontaxable maintenance” and awards of \$46,583 in counsel fees and of \$5,240 in expert fees and disbursements, is non-dischargeable under the Bankruptcy Code because the payments are in the nature of alimony, maintenance and support.

On February 25, 2005 and March 18, 2005, the Court conducted the trial of the adversary proceeding. For the reasons set forth below, the Court finds that the Hurd Claim is not non-dischargeable under Bankruptcy Code §523(a)(5) because Hurd has failed to meet her burden of proof to establish that her claim is in the nature of alimony, maintenance or support. The Court further concludes that at the time of trial, the debtor did not have the ability to pay the Hurd Claim and that discharging this obligation would confer a benefit to the debtor that outweighs any detrimental consequences to Hurd. Accordingly, the Hurd Claim is discharged.

### **JURISDICTION**

This Court has jurisdiction over this core proceeding under 28 U.S.C. §§1334(b) and 157(b)(2)(C) and the Eastern District of New York standing order of reference dated August 28, 1986. This decision constitutes the Court’s findings of fact and conclusions of law to the extent required by Fed. R. Bankr. P. 7052.

### **FACTUAL BACKGROUND**

On October 15, 1977, Hurd and the debtor were married. *See* Post-Trial Brief of Debtor-Defendant Robert J. Hurd (“Post-Trial Brief of Debtor”) at 3. On November 21, 2001, the marriage was dissolved upon the entry of a Judgment of Divorce. *See* Plaintiff’s Exhibit (“Pl. Ex.”) 4.

Hurd earned a Bachelor of Arts in Psychology from Lake Erie College and a

Master of Arts in Languages & Literature from Columbia University Teacher's College. *See* Transcript of Hearing of February 25, 2005 ("Tr. I") at 71; Pl. Ex. 7. Hurd's employment experience has been in the fields of sales and real estate. From 1973 through 1977, she worked as an Export Sales Manager of a global home furnishings company. *See* Pl. Ex. 7. From 1978 through 1980, Hurd was an International Sales and Marketing Manager for Revlon, Inc. *Id.* From 1980 through 1988, she worked as a licensed real estate broker. *Ibid.*<sup>1</sup> From 1988 through 1994, she was an Assistant Vice President for a Japanese credit card company and earned an annual salary of approximately \$49,000. Tr. I at 112. Hurd has been unemployed since 1994. *Id.* at 72; Pl. Ex. 7. She testified that she had applied and interviewed for various sales positions but could not remember any information which would verify that she actually did in fact attempt to find employment. Tr. I at 119.

The debtor was also a highly educational professional. He held a Bachelors Degree in Business Administration from Pace University and a Masters Degree in Business Administration from Fordham University. *See* Transcript of Hearing of March 18, 2005 ("Tr. II") at 46. When they married, the debtor was the President of Reflections 21 ("Reflections"), an entity engaged in the decorative towel industry. *See* Def. Ex. W at 2. His annual salary at that time there was approximately \$65,000. *Id.* From 1982 through 1985, the debtor made a largely failed attempt at operating his own decorative towel company called Sedgefield Manufacturing Co. ("Sedgefield"). *Ibid.* In 1985 and 1986, the debtor worked as a real estate agent before becoming an instructor at Berkeley College, where he worked continuously until his death. *Id.* From 1995 through 2001, the debtor served as the President of Berkeley College. *Id.* at 3. From

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<sup>1</sup> According to records maintained by the New York State Department of Health, Division of Licensing Services, the Plaintiff has renewed her real estate broker's license every two years since 1998. *See* Defendant's Exhibit ("Def. Ex.") Z. Hurd testified that she did not remember renewing her license. Tr. I at 101 and 102.

2001 until his death, the debtor worked as a professor in the accounting department at Berkeley College. Id.; Tr. II. at 47. His annual salary was approximately \$101,000. Id.

In 2002, the debtor married a woman who had three children from her previous marriage. Tr. II at 50. At the time of the trial, the debtor's wife was the Dean at Brooklyn College. Id. Her annual salary was \$70,000. Ibid. The debtor testified that his wife did not receive any type of child support or maintenance and that she utilized substantially all of her income to support her three children, two of whom were in college. Id. at 52; 107 and 108.<sup>2</sup>

Hurd's mother, Yone Riber ("Riber"), lives in Japan and has extensive assets in North America and elsewhere. *See* Tr. I at 132; Tr. II at 101. In the early eighties, Riber pledged her personal accounts as collateral so that Sedgefield could obtain a line of credit from Northwestern Bank ("Northwestern"). Tr. II at 60 and 61. After a default on this line of credit, Northwestern obtained a judgment and sold all of Sedgefield's assets. Id. When Northwestern made a demand for payment of the balance of its judgment, which was approximately \$69,000, Riber paid it. Ibid. In return, the debtor agreed to repay Riber the \$69,000 with interest at 4% per annum. Id.

In December 1997, the Family Court, New York County awarded Hurd interim spousal support from the debtor. Shortly thereafter the debtor commenced an action for divorce in Suffolk County. This action was later transferred to the County of New York. Decision On Motion For Relief From the Automatic Stay dated February 27, 2003 (the "Decision Denying the Automatic Stay") at 2-3.

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<sup>2</sup> By letter dated October 5, 2005, counsel for the debtor advised that Mr. Hurd had passed away after the trial of the adversary proceeding. By letter dated October 21, 2005, counsel for the debtor advised that counsel for the parties had conferred and requested that the Court render a decision in connection with the adversary proceeding.

On June 23, 2000, the parties reached a settlement of the Divorce Action. This settlement, as stipulated to on the record (the “Stipulation”), provided that the debtor would:

- (a) pay Hurd a distributive award of \$85,000.00, within thirty (30) days of the Stipulation;
- (b) make three (3) annual payments of \$35,000.00, commencing on July 1, 2001 through July 1, 2003, to Hurd as nontaxable maintenance payments. Said payments were secured by a Confession of Judgment executed in the amount of \$105,000.00; and
- (c) obtain and maintain a decreasing term life insurance policy with Hurd as irrevocable beneficiary with an aggregate death benefit of no less than \$100,000.00.

*See* Pl. Ex. 1. The Stipulation further provided that the debtor’s payments were intended to satisfy the debts due to Riber and that Hurd would indemnify the debtor upon receipt of the three “nontaxable maintenance” payments. *Id.* at 4-7.

In July 2001, the debtor made the \$85,000 distributive award payment and the initial \$35,000 “nontaxable maintenance” payment to Hurd. By Order dated January 22, 2002, the New York County Supreme Court awarded Hurd \$46,583.00 in attorneys’ fees and \$5,240.00 in expert fees and expenses (the “Fee Order”). The debtor defaulted on the \$35,000 payment to Hurd due on or before July 1, 2002. Decision Denying the Automatic Stay at 3.

On July 24, 2002, the debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. On October 18, 2002, Hurd filed a motion for relief from the automatic stay contending that the debtor’s payments were non-dischargeable in bankruptcy in accordance with 11 U.S.C. § 523(a)(5). On October 22, 2002, Hurd commenced this adversary proceeding against the debtor where she sought a substantially similar result as was sought in her motion for relief from the stay.

On February 27, 2003 this Court issued a Decision and Order denying Hurd's motion for relief from the automatic stay. The Court found that the question of whether a debt is actually in the nature of alimony, support or maintenance and non-dischargeable under Section 523(a)(5) of the Bankruptcy Code is one of federal, not state, law. The Court also stated that this Adversary Proceeding was the proper forum to determine the dischargeability of the debtor's obligations.

On February 25, 2005 and March 18, 2005, the Court conducted the trial of the adversary proceeding. In her trial testimony on February 25, 2005, Hurd described her motive in entering into the Stipulation. She testified that she "always knew that the debtor-defendant would go into bankruptcy" and that she did not want to enter into a settlement "where everything was equitable distribution" because she did not want to "take a chance" that she "would be left with nothing" if the debtor filed for bankruptcy protection. Tr. I at 98. She wanted monthly support payments, but "lost on that" point. Id. at 97. Instead, the parties agreed on three annual payments of \$35,000 with payment starting a year from when they entered into the Stipulation. Hurd stated that this figure "was partially based on [her] monthly expenses ... of around \$3,000". Id. at 95.

In their trial testimony, the debtor and his matrimonial counsel, Richard Olivieri ("Olivieri"), countered that no consideration was given to how much Hurd needed for her daily maintenance and support when devising the \$35,000 figure. Tr. II at 31, 32, 70 and 71. Rather, the Stipulation distributed proceeds from the debtor's 401(k) plans and enhanced earnings received from his CPA license. Id. This distribution provided Hurd with funds to repay Riber. Ibid. The debtor explained that the Stipulation was broken up into one distributive award and

three subsequent payments because the terms of his 401(k) plans restricted the amount of his annual withdrawals. Id. at 70 and 71.

Olivieri testified that the \$35,000 payments were labeled “nontaxable maintenance” at the “last minute... It was not the core of the discussions by no [sic] means.” Id. at 29. Olivieri stated that his:

recollection of that was it was more of a fiction than anything else. Mrs. Hurd had become concerned about the tax implications of the distributive award if it were labeled distributive award. I don't think she wanted to incur any taxes. I don't think that she wanted her mother to incur any taxes because this was a repayment of debt with substantial interest. It is my recollection that it was labeled that for tax purposes.

Id. at 28.

## **DISCUSSION**

### **HURD HAS FAILED TO MEET HER BURDEN OF PROOF THAT THE HURD CLAIM IS NON-DISCHARGEABLE**

Hurd seeks to have her claim against the debtor deemed non-dischargeable under Section 523(a)(5) of the Bankruptcy Code. She contends that the debtor's obligations to pay \$70,000 in “non-taxable maintenance payments” and \$51,823.00 in professional fees and disbursements are in the nature of alimony, maintenance and support and therefore non-dischargeable under the Bankruptcy Code.

Section 523(a)(5) excepts from the discharge any debt:

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record ... but not to the extent that –

(A) such debt is assigned to another entity, voluntarily,

by operation of law, or otherwise ...; or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.

11 U.S.C. §523(a)(5).

The non-debtor spouse opposing the discharge of a particular debt has the burden of establishing that such obligation is non-dischargeable by a preponderance of the evidence. *See In re Kerzner*, 250 B.R. 487,492-3 (Bankr. S.D.N.Y.2000); *In re Rosen*, 232 B.R. 284,290 (Bankr.E.D.N.Y. 1999). The spouse must establish sufficient facts to prove that the obligation was: (1) incurred in connection with a separation agreement, divorce decree, or other order of a court of record; (2) to a spouse, former spouse, or child of the debtor; and (3) “actually” in the nature of (as opposed to simply designated as) alimony, maintenance or support. 11 U.S.C. §523(a)(5)(B). *See also, Carlin-Blume v. Carlin*, 314 B.R. 286, 291 (S.D.N.Y. 2004).

Hurd has established facts satisfying the first two requirements. She proved that the debtor’s obligations arose from the Judgment of Divorce that enforced the Stipulation and Fee Order and were obligations to a former spouse. The outstanding issue is whether these obligations were “actually” in the nature of alimony, maintenance or support.

Courts have established various factors to be considered when ascertaining whether an obligation is a property settlement or in the nature of alimony, support or maintenance. *In re Brody*, 3 F.3d 35,38 (2d Cir.1993). Some of these factors include:

- (1) the characterization given to the obligation by the parties;
- (2) the parties' negotiations and understandings of the provisions;
- (2) whether the obligation was designed to rehabilitate or assist the spouse's rehabilitation after the divorce;
- (3) whether the obligation was subject to contingencies such as remarriage or death;

- (4) whether the obligation was payable in installments over a substantial period of time or a lump sum;
- (5) the income and the needs of the parties at the time the obligation became fixed; and
- (6) the ability of the non-debtor spouse to obtain gainful employment.

Id.; In re Vittorini, 136 B.R. 632,635 (Bankr. S.D.N.Y. 1992). In general, however, all of these factors are designed to help determine the intent of the parties at the time the obligation was agreed upon. In re Bonheur, 148 B.R. 379,382 (Bankr. E.D.N.Y. 1992).

HURD HAS FAILED TO ESTABLISH THAT  
THE NONTAXABLE MAINTENANCE PAYMENTS  
WERE ACTUALLY IN THE NATURE OF  
ALIMONY, MAINTENANCE OR SUPPORT

The Stipulation called for the debtor to make three (3) annual payments of \$35,000.00, commencing on July 1, 2001 through July 1, 2003, to Hurd as nontaxable maintenance payments. The debtor made the initial \$35,000 payment to Hurd in July 2001 but failed to make the two subsequent payments. Relying upon the holding in In re Boccio, 281 B.R. 171 (E.D.N.Y. 2002), Hurd argued that the nontaxable maintenance label in the Stipulation is dispositive and warrants a finding that this debt is non-dischargeable. *See Post-Trial Brief of Marianne Hurd* (“Post-Trial Brief of Hurd”) at 6. Hurd’s reliance is misplaced. In In re Boccio, the court found that the \$39,000 “maintenance” award was non-dischargeable because all the alleged facts contained in the plaintiff’s complaint were deemed true; the debtor had not filed an answer. 281 B.R. at 175. Here, the debtor has filed an answer to Hurd’s complaint and in so doing denied the allegations of the Complaint that the parties intended the “nontaxable maintenance payments” totaling \$105,000 as spousal support payments. *See Answer filed November 12, 2002.*

Hurd further contended that the maintenance award of \$35,000 per year was

based upon her approximate expenses of \$3,000 per month. *See* Tr. I at 95. She testified that despite her higher education she had not been able to find a job and the purpose of the “nontaxable maintenance payments” was to provide her time to obtain employment and “rearrange her life.” *Id.* at 96.<sup>3</sup> Hurd testified that she sought a “salaried” “sales related” position paying at least \$50,000 per year. *Id.* at 111, 112 and 113. However, she claims to not “remember” any of the potential employers to whom she had applied or with whom she had interviewed. *Id.* at 119 and 120. She also failed to offer an adequate explanation why she could not resume her career as a real estate broker. *Id.* at 105 and 106.

Moreover, Hurd failed to provide a current budget to support her testimony that the \$35,000 per year figure was “partially” based on an estimate of her monthly expenses. That she and her matrimonial attorney, Heidi Opinsky, sought to have a portion of the amounts which the debtor owed designated as maintenance does not establish what the parties intended the payments to represent. *Id.* at 87, 98 and 99. The testimony of the debtor and Olivieri sharply contradicts Hurd’s testimony regarding how the parties arrived at the \$35,000 amount. The debtor and Olivieri testified that Hurd’s alleged need for continued support was never an issue with regard to the Stipulation. *See* Tr. II at 31, 67 and 68. Despite Hurd’s unemployment, she and the debtor had relatively similar financial conditions when they entered into the Stipulation. The debtor’s only significant assets at the time were the amounts held in his 401(k) accounts which totaled approximately \$170,000, the income from his teaching position and the enhanced earnings he received from his CPA license. *Id.* at 49:16-20. Hurd, at that time, had the balance

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<sup>3</sup> Hurd cited the debtor’s testimony at the Meeting of Creditors held on August 29, 2002 as further support for her contention. *See* Post-Trial Brief of Hurd at 5. During that meeting, the debtor, when asked whether he had agreed to pay Hurd “maintenance” under the Stipulation, answered in the affirmative. Pl. Ex. 17. In the Court’s view, however, this answer is susceptible to several interpretations, including that the debtor believed the question referred to the terms used in the Stipulation. *See* Tr. I at 97 and 98.

of settlement proceeds from a prior civil action<sup>4</sup> and the real-estate interests she held in the Pennsylvania and Fifth Avenue properties. *See* Def. Exs. J,K,W. She also had access to her mother's wealth. *Id.* *See also*, Tr. I at 55.

In addition, the parties' intent that the "nontaxable maintenance" function as a property settlement, and not an ongoing support award, is evident from Hurd's expressed intent to use the funds to repay her mother. The Stipulation provided that upon repayment of the \$105,000 of nontaxable maintenance, Hurd would indemnify the debtor for the amounts he owed to Riber. *See* Pl. Ex. 1 at 4-7. Based upon this statement, it seems logical to infer that if Hurd planned to use the nontaxable maintenance payments for support and pay back Riber solely with the \$85,000 distributive award, she would not have stipulated to this guarantee.<sup>5</sup>

Finally, the fact that the debtor's nontaxable maintenance obligations were to be paid annually rather than at short intervals and over the course of three years rather than over an indefinite or substantial period of time (e.g. death or until death) leads this Court to conclude that the award was not intended for support. *See In re Kerzner*, 250 B.R. at 495.

Based on the foregoing, the Court finds that Hurd has not met the burden of proof that the \$70,000 of "nontaxable maintenance" is in the nature of alimony, maintenance and support.

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<sup>4</sup> In May 1996, Hurd received approximately \$233,000 of an approximately \$375,000 settlement of a sex/age discrimination suit brought by her against J.C.B. International Credit Card Co., Ltd., one of her former employers. Although they were married at the time, the debtor did not receive any portion of those monies from Hurd. *See* Tr. I at 72 and 73.

<sup>5</sup> Moreover, the January 31, 2002 Decision and Order of the Hon. Laura E. Drager with regard to the award of counsels' and experts' fees noted that Hurd represented to the Court that she (a) utilized the \$85,000 award to repay her mother certain of the amounts owed by the Debtor, and (b) intended to utilize the balance of the "nontaxable maintenance" payments to repay her mother additional amounts the Debtor owed. Pl. Ex. P 3 at 2 and 4; Tr. I at 55.

HURD HAS FAILED TO MEET HER BURDEN  
WITH REGARD TO THE AMOUNTS OWED FOR  
PROFESSIONALS' FEES AND EXPENSES

Hurd also contends that the amounts owed to her by the debtor for professional fees and disbursements pursuant to the Fee Order are non-dischargeable under Section 523(a)(5) of the Bankruptcy Code. Attorney fees are non-dischargeable to the extent they relate to services rendered in pursuit of maintenance or support. Pauley v. Spong (In re Spong), 661 F.2d 6,8 (2d Cir.1981). The reasoning behind this is that “[a]n award of attorney’s fees may be essential to a spouse’s ability to sue or defend a matrimonial action.” In re Spong, 661 F.2d at 9. If an award of fees is based upon the relative needs of the parties, “such fees are usually dischargeable as being in the nature of support.” In re Rosen, 232 B.R. at 291. The party opposing the discharge bears the burden of demonstrating that the court’s intent was to award these fees as part of a support and maintenance award and not as a division of property.

In support of her claim, Hurd asserted that the state court directed the debtor to contribute to her professional fees and expenses upon a “finding of need.” *See* Post-Trial Brief of Hurd at 8. This is not an accurate recitation of the state court’s conclusion. Justice Draeger stated in the Fee Order that:

A review of the record discloses a discrepancy in the parties’ respective incomes. Plaintiff has been steadily employed by Berkeley College, and thus has significant greater earning power than defendant, who has not worked since December 1993. On the other hand, the reasons proffered by defendant for her continued unemployment lack merit. Moreover, she does not dispute that she received a substantial award from her

discrimination suit. At this time, however, it appears that Plaintiff has more assets than defendant.

Fee Order at 4.

These statements do not suggest that Hurd was entitled to this award based upon a “finding of need.” Instead, they suggest that the state court determined that Hurd and the debtor had disproportionate amounts of income. Hurd has failed to establish either through any testimony or documentary evidence that the award of counsel fees in the amount of \$46,583.00 and expert fees and disbursements in the amount of \$5,240 was based upon need and is therefore non-dischargeable.

Accordingly, the Court finds that Hurd has failed to meet her burden of proof that the obligations incurred under the Fee Order are non-dischargeable under Section 523(a)(5) of the Bankruptcy Code.

THE DEBTOR HAS DEMONSTRATED THAT THE  
MARITAL OBLIGATIONS ARE DISCHARGEABLE PURSUANT  
TO SECTION 523(a)(15) OF THE BANKRUPTCY CODE

Once it has been established that a debt is not excepted from discharge under Section 523(a)(5) of the Bankruptcy Code, the burden shifts to the debtor to submit facts sufficient to prove that the debt is dischargeable under Section 523(a)(15) (A) or (B) of the Bankruptcy Code. In re Foto, 258 B.R. 567, 572 (Bankr. S.D.N.Y.2000). Section 523(a)(15) excepts from discharge any debt:

not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless –

(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or dependent of the debtor ... ; or

(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor.

11 U.S.C. §523(a)(15). As seen below, the debtor has met his burden of proof that the debt is dischargeable under Section 523 (a) (15) of the Bankruptcy Code.

A. The Debtor Has Shown An Inability to Pay the Hurd Claim

Under Section 523(a)(15)(A), the debtor must establish that he does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor ....” At the trial, the debtor was employed as an accounting professor at Berkeley College with an annual salary of \$101,000. *See* Tr. II at 47. In addition to his salary, the debtor received approximately \$1700 per month in Social Security Benefits. *Id.* at 50. The debtor had a net annual income of approximately \$70,000. *Id.* at 102. The debtor’s “reasonably necessary” living expenses totaled approximately \$50,000. *Id.* at 106; *see also, In re Foto*, 258 B.R. at 572-73. This figure does not include payments to the debtor’s creditors. *See* Trustee’s Report of No Distribution filed July 14, 2003. The debtor was married to a woman who made approximately \$70,000 a year. *See* Tr. II at 50 and 51. Undisputed testimony reflected that substantially all of her income was used for the education and support of her three children, two of whom were in college. *Id.* Under these circumstances, the Court finds that the debtor did not have the ability to pay the \$121,823.00 in arrears to Hurd.

B. The Benefit to the Debtor of Discharge of the Hurd Claim  
Outweighs the Detrimental Consequences to Hurd

Under Section 523(a)(15)(B), the debtor must establish that discharging the Hurd Claim would result in a benefit to the debtor that outweighs the detrimental consequences to a ... former spouse. The debtor has established that the benefits of discharge outweigh the detriment to Hurd of foregoing the \$121,823.00 remaining on her \$241,823.00 award. At trial, the debtor was very ill. He had undergone two major operations and was advised that he had less than a five percent chance of survival. Id. at 45 and 46. He testified that he could only “teach two days a week” and “need[ed] about two other days to recover from the days” of teaching. Id. at 48. In addition, when asked what impact it will have on him if the debt is not discharged he testified:

I don't know where I will come up with the money to repay. I have limited resources. My income has been cut over 50 percent the last three, four years. My prospects for earning more money are very, very limited. Part of it because of health issues. I am limited in the amount of time I can devote to working. I can't put in 10, 12 hour days any longer.

Id. at 74 and 75. The debtor has since passed away.

In contrast, Hurd presented no evidence that her failure to receive the \$121,823.00 which the debtor owed to her has materially affected her lifestyle.

**CONCLUSION**

Based on the foregoing, the Court finds that Hurd has not met her burden of proof that the obligations flowing from the Stipulation and Fee Order were actually in the nature of alimony, maintenance or support as required under Section 523(a)(5) of the Bankruptcy Code. The Court further concludes that the debtor does not have the ability to pay the \$121,823.00 remaining unpaid and that discharging this obligation would confer a benefit on the debtor that

outweighs any detrimental consequences to Hurd. Accordingly, the Hurd Claim is discharged.

SO ORDERED.

Dated: Brooklyn, New York  
March 13, 2006

S/Dennis E. Milton

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DENNIS E. MILTON  
United States Bankruptcy Judge