

**EPISODE 409**

[INTRODUCTION]

[00:00:34.7]

**FT:** Hey everyone, welcome to So Money. Thanks for joining. I'm your host, Farnoosh Torabi. Thursday. Thursday is my favorite day of the work week. For some reason, I don't know why. I think it's because ever since college, Thursday was the unofficial end of the week. Thursday nights we always went out and also Thursday nights in the Torabi-Dussinger household is date night so maybe that's why I'm so excited for Thursdays.

Fridays are good too because obviously it's Friday but I don't know, there is something about Thursdays. Anyone else here relate to this? And of course because it's the day after Wednesday when Follow the Leader on CNBC airs, I get to hear everyone's feedback on the show. What do you think of last night's episode with Katia Beauchamp, CEO of Birchbox? It's a tough time to be the CEO of Birchbox.

I've got to say, the company is going through some growing pains, rerouting their business plan a little bit where once they were just really excited about people signing up for their subscription, \$10 a month but really the goal is to get those subscribers to buy the full size products at Birchbox.com which the biggest competitor to that is inertia because we're used to buying beauty products over the counter at drug stores.

This idea of buying it online is still foreign to us so they're trying to change human behavior and if you missed any of last night's episode, you can go to [followtheleader.cncbprime.com](http://followtheleader.cncbprime.com) and watch the full episode there for free and we have all the rest there as well.

Today's guest by popular demand is a student loan attorney. I first heard about Jay Fleischman when I was on set on Follow the Leader and I was talking to my executive producer, Lisa, who along with her sister have a lot of student loan debt from grad school and she said, "You know my sister just got off the phone with this lawyer named Jay Fleischman and apparently, he's going to help her with her student loans."

I'm sitting there thinking, "How? How is he really helping her?" Because I didn't realized that an attorney could really help you unless of course maybe you're going through bankruptcy and even then, it's impossible. Nearly impossible to have your loans eradicated in a bankruptcy. So I had to get in touch with Mr. Fleischman. I wanted to learn what does he do, how does he help people and is there really hope for the millions of Americans out there that have student loan debt?

I mean the average student loan debt upon graduating from undergrad is around \$30 to \$35 grand. Student loan debt has reached over a billion dollars more than credit card debt in this country as a total. It's a big problem and so people like Jay Fleischman hopefully they're growing in numbers because unfortunately, we need a lot of help in this area and so a little bit more about Jay.

He has been working as a consumer protection attorney for over 20 years and most recently, he focused on helping people with student loan problems. He is a partner with a law firm, Shaev and Fleischman and practices in both New York and California. He's been in the New York Times, The Wall Street Journal, Huffington Post, Fox News. He also has a weekly podcast called The Student Loan Show.

On that podcast, he breaks down the complex world of student loans, consumer debt so that people can take control of their situation. So with Jay, I wanted to learn first of all how big is this problem and what are the most common issues his clients come to him with? What if you have a private loan? We know that there are some federal programs that can assist those federal loan borrowers, namely, income based repayment but what if you have a private loan?

What is your best bet then if you cannot pay back that loan? Advice for parents who are thinking about or who are currently co-signing a loan with their child and some free resources. So before you go and hire an attorney to help you, what are some free ways that you can learn how to get out of your debacle?

Here we go, here is Jay Fleischman.

[INTERVIEW]

[00:04:30.2]

**FT:** Jay Fleischman, welcome to So Money. I should have you on like back in January when we did a whole week dedicated to student loans and college, better late than never. Welcome to the show.

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**JF:** Thank you for having me Farnoosh.

[00:04:41.9]

**FT:** So you are a student loan lawyer and you started practicing law, helping consumers. Specifically and more recently, your work has shifted towards those of us who feel option less with our student loan debt. Tell me a little bit about the market place right now, how busy are you? How big is this problem and then we'll get into some of the solutions but can you tell me a little bit about your work and how you're helping people?

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**JF:** Well, I started out as a consumer bankruptcy attorney. I like to tell people that I grew up as a consumer bankruptcy lawyer though not quite that long and for years people would call me up and they would tell me that they were having problems with their student loans and for a long time, I defaulted to what most bankruptcy lawyers will say which is, "Well, I can't really help you."

Student loans are very difficult to handle in bankruptcies and so I would send people away and at some point, it became so overwhelming. The volume of calls that I was getting from people who were specifically and solely dealing with student debt that I figured that it was going to be time to start educating myself and to start really diving into some of the ways that people could handle their student loan problems to the extent that at this point, it comprises 98% of my work.

Talking about how busy I am, I've been a bankruptcy lawyer and an attorney for a little over 20 years now and I have never been this busy in my professional life ever, bar none. The problem is so overwhelming for so many people and it cuts across ages, genders, racial lines, demographics of all sorts that it is absolutely amazing and I'm so happy that people are starting to talk about it because I think that when you start talking about it, that's what begins to drive people to think about solutions.

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**FT:** Is there a misconception that people have when it comes to paying off your student loans? We talk a lot about how it's nearly impossible to erase these in a bankruptcy ruling, that while we call student loans good debt, they can become rapidly ugly debt because if you ignore them or you're late, they can come and you can have your wages withheld or your tax refund withheld. What are some of the myths maybe out there that are keeping people from getting the help that they need?

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**JF:** There are a number of myths. The biggest myth out there is that there is nothing that you can do about student loans. Everybody says that there are two things that are foregone conclusions, those are death and taxes. What a lot of people think is that student loans are the third thing that you can never do anything about.

But the reality is that, particularly with federal student loans, there are so many options that the government makes available for bringing your payments in line, for setting yourself up for a long term forgiveness of your student loans after a period of payment and really being able to make your student loan payments fall in line with your financial circumstances.

Because so many people don't know about those options, what invariably happens is they throw their hands up and they just hope that they're going to go away and of course, when you ignore a problem, it gets far worse. On the private student loan side, a lot of people think that they are treated exactly like federal loans, but that's just not the case.

Student loans, I tell my clients that the only time that it matters that it's a student loan is when you're talking about bankruptcy. Outside of bankruptcy, a student loan is treated exactly the same way as any other bank loan or any credit card debt. It is a general unsecured consumer type debt. Collections run exactly the same way as any other standard debt that you would think about.

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**FT:** Well private versus, public when it comes to student loans, different ramifications and a lot of the trouble lies with the private loans because they don't have what the government has. They don't have income based repayment at the private institutions. What are some solutions or strategies for those of us carrying private student loan debt that we may not know so much about that you are educating your clients on?

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**JF:** Well, the first thing is as you said, there are no repayment options. So when it comes to private student loans, the issue is pay or don't pay, and if you're in a position to pay, that's fantastic and you undoubtedly don't need my help. But if you can't pay, then it comes down to understanding what the collection process is all about and how that's going to work because interest is going to continue to accrue, but the debt will be charged off.

And you will go into default and you will be sent to collections. There are ways to be able to work with debt collectors to first reduce the amount of pressure that they put on you. You can manage the way that a debt collector engages in their debt collection activities. You can stop the phone calls, you can stop the letters, you can stop them from calling you at work if you're unable to take private calls at work.

You can do those things and so you can bring that pressure down. Beyond that, private student loans as oppose to federal student loans, private student loans tend to settle fairly well for consumers because there are no federal protections and there are no guarantees on repayment from the lender side, a lot of the private student loan lenders, once you are in default, will work

with you aggressively to bring down your balance, to bring down your payments and really to help you make those manageable as well.

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**FT:** And at that point if you are in default, your credit is already shot. So at that point, why not just go the full distance and work with them into settling because we should mention to listeners when you settle any kind of debt where you're paying maybe 50 cents on the dollar or you're not refinancing, you're settling.

That does have consequences for your credit but I guess if your student loans are keeping you up at night and you're considering and it's making you depressed and I think better to just take the offer, what do you think about that? I mean it's like a rock/hard place, what do you do?

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**JF:** Exactly. When you go past due on a debt, as you said, your credit is going to be shot anyway. It is better for your credit in the long term and better for your personal financial position in the long term to be at a zero balance than it is to have the debt continuing to drag you down. So debt settlement is not perfect.

It is, I think, one of the last options that you want to look at but if you're between that rock and a hard place, you'd rather be able to put yourself in a position where you can make yourself more financially stable, bring your balance to zero and be able to move forward with it as opposed to just having the shackles around your ankles.

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**FT:** So what are some of the innovative ways you're working with clients right now? Are you able to erase some people's debt in some cases if you are, what are those cases like?

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**JF:** For federal student loans as some people are aware, there are a number of ways to be able to erase the debt. The big one is public service loan forgiveness, if you're working for a government organization or a not for profit and you make your payments for a period of 120 months while you're employed full time, the government will allow you to erase the unpaid balance at the end of that 120 months tax free.

So that is an absolute forgiveness, that's not the same thing as a discharge of indebtedness, which you would get at the end of income based repayment or one of the other income dependent repayment options where you get a 1099 at the end and you may potentially have a tax implication there. For federal student loans, you've got public service loan forgiveness, you've got getting into one of the income dependent repayment options, you've got disability discharge which the government is thankfully now starting to take a more proactive approach towards.

The government about a week and a half ago as we record this, came out with a new policy where if you are totally and permanently disabled under the social security administrations, guidelines, the department of education's going to be getting in touch with borrowers to advise them that this discharge opportunity may exist for them and give them that opportunity because so many people don't know about it.

There are also discharge opportunities if your school closes. If you're at a for profit school that is close such as the Corinthian College that went under in 2015, there's something called defence to repayment that the government's currently in negotiated we're making about to see how that may be able to be extended in the event that you're at a school defrauded you. There are those opportunities.

In a private student loan setting, what a lot of people don't realize is private student loans are not bought and sold the same way that credit cards are. Credit cards are routinely bought and sold for the proverbial pennies on the dollar. Private student loans are not, private student loans are securitized in the same way that Mortgages are secure ties, they're bundled together...

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**FT:** Which is kind of scary.

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**JF:** It's way scary.

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**FT:** When you think about what brought down the economy, those mortgage backed security is, there are student loan backed securities too and if people are defaulting on them, I don't know, that's another podcast but Jay, you must be having like night shivers around that.

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**JF:** It is bananas.

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**FT:** You're contributing to the problem Jay.

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**JF:** It's all my fault.

[0:15:26.4]

**FT:** It's all your fault. You're settling all these debts.

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**JF:** It's terrible, but the problem there is that when the loans are secured and tied bundled together and sold off in bits and pieces to investment trust. What happens there is the accounting is so bad, it is nearly impossible to determine how much money you actually owe



and so many borrowers are just taking everything at face value. Beyond that, there is — one of the major securitized trust, a company called national collegiate student loan trust that a lot of people get sued by. When the trust were originally put together, there were guarantee insurance policies put in place.

So what would happen is, if you went into default and the loan was sold of to the guarantee company, the guarantee company had to give you the opportunity to rehabilitate your loan, which doesn't exist in private student loans normally but these guarantee policies specifically gave the borrower the ability to rehabilitate the loan and bring it back into active repayment just like federal student loans.

Unfortunately, the guarantee insurance company went out of business, filed for bankruptcy and jettisoned all of their insurance policies. So all of those loans have the opportunity to rehabilitate but none of the borrowers are being offered that opportunity. So that creates a problem for the lender and really, it creates an advantage for the borrower. There are all of these things that only after you've taken a really deep dive into SCC documents, which I'm sure you know how exciting that it can be.

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**FT:** I do that in my spare time all the time, I'm doing it right now.

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**JF:** Exactly, exactly.

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**FT:** That's why we pay you the big bucks.

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**JF:** It's like Huffington Post, you read it all the time, right? So those are some of the things that I look at when somebody comes to me with a private student loan problem and it's a really great way for the borrower to gain some leverage against the lender that they normally wouldn't have.

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**FT:** Okay, let's just get it out there. How much does it cost for someone to work with an attorney like you? These are clients who obviously coming to you with financial problems or not rolling in the dough. So how do you make it affordable?

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**JF:** For federal student loans, I am of the mind that a borrower should never pay for a solution. A borrower should pay for advice and information but there are a lot of companies that will charge people \$1,500 to do a federal student loan consolidation, which is free. You can do it for free online.

So I don't do that, I will charge a very modest amount of money to do an analysis of a borrower's situation and we do it typically by phone and by email, combined. We do phone as well as email because they've got to get me documents, I review everything with them and I give them a road map of what they need to do, I give them the forms that they're going to need to fill out.

I give them the procedures, the checklist, I tell them everything that they need to do because it makes it far more cost effective for them as opposed to having to worry about spending \$1,500 for a consolidation or \$500 to get into an income dependent repayment option. I just think that that's the best way for people to go about it.

With respect to private student loans, a lot of that is based upon what I need to do. If somebody's only in collections, I say "only in collections", but they're not actually being sued. What I'll typically do is, I will tell them what they need to do, I will work with them through the process because it is in the event that a debt collector steps over the line and violates its' set of federal laws, it's called the Fair Debt Collection Practices Act.

There are also a variety of state based laws that mirror it but those laws govern how debt collection can take place. In the event that a debt collector steps over that line, the consumer, the borrower here has the right to file a lawsuit against the debt collector and recover not only damages but also their legal fees. If that happens, I'm getting paid by the debt collector. It's effectively free for the borrower or at least no money upfront.

In litigation, if they're being sued, typically that's going to be a flat fee, we do our best to keep it as low as possible and we can do that because of the efficiencies that we've got in place. We've been doing this for quite some time and we do it on a regular basis. So we try our best to make it as easy as we can for people.

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**FT:** Your website has a lot of resources so before picking up the phone or emailing Jay, you can probably learn a lot on your own at Consumerhelpcentral.com, you've got podcasts, you have articles. What about parents who are cosigners with their young adult children on student loans? What's your advice to parents who may also be worried about this bill?

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**JF:** I think that they need to be able to have a conversation with their children or in a lot of cases, it's not even grandparents by the way, it's a lot of grandparent's not just parents rather. We see a lot of grandma and grandpa are in their 80's and they cosign for the private student loan. Far more so than parents actually.

So what I like to tell people to do is if at all possible, have that conversation before signing for the loan. Figure out with the student what's going to happen after graduation if things don't work out as well as they all hope that it's going to work out because the financial realities are significantly different than the optimism that we go into college facing.

If the loan is already in play, the guarantor or cosigner really needs to do everything that they can do to make the payments and stay on top of the borrower, the student, to make their

payments. Even if it means, and ideally what's going to happen is the students going to go into an income dependent repayment option for their federal student loans, hopefully to free up some money to be able to pay those private loans. Because, if the private student loan goes into default, the guarantor or cosigner is 100% on the hook along with the borrower. There's a lot of financial conversation that needs to occur.

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**FT:** Yes, and you're taking on this loans when you're 18, 19 year's old. You might never had a job yet, you don't even know what taxes are and so it's a huge, huge financial engagement and I think that there just, for whatever reason, there's really not a lot of education around this and you have to make the decision quite soon because college happens right after high school.

You've got your ear to the ground so closely Jay, I'm curious to know if you think there's any change that's happening or has to happen, whether colleges have to find ways to become more affordable or private institutions cannot be so quick to give the \$30,000, \$100,000 in loans to someone who has no credit history, who is 18 years old. I think that's a problem. What's going to have to change? Because we cannot continue the status quo.

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**JF:** No, absolutely. I think that colleges need to be held more accountable for their overhead. I think that over the period of the last 10, 15 years, you see even my school, I went to a state school in New York and when I went to school, my student union and my meal plans they were not great. We ate whatever they fed us and it was definitely not high end stuff, I went back to my campus a year and a half ago and I'm telling you, this place is decked out because the schools aren't held accountable to their overhead and so there's a race to the top.

People go to score campuses and no they're not just looking for the best education but they're being lured by the nicest facilities, the most luxurious dorms, the highest end food. They're being lured by the things that the campuses aren't being held accountable to anybody. So every campus looks and says, "Well, we need to attract the best and the brightest so we're going to spend as much money," and there's so much money in the market, federal as well as private

that it's readily available to everybody, it's just sign on the dotted line. So I think that there has to be that accountability.

I don't think that education — I've got a young child and I don't think that when my child reaches college age that higher education is going to look remotely the same way as it does now. I think that there's probably going to be a lot of consolidation in just normal not for profit as we consider old line four year universities.

I think that there's going to be a greater emphasis on two year colleges and I think the technology is going to be leveraged even more than it is being leveraged now to deliver education in alternative ways, we're already seeing it, the growth in online education is tremendous for professionals like you and I. But I think that at the college level, we're going to start seeing that really take on a life of its own.

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**FT:** What's your hope for him when he goes to college?

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**JF:** Oh my hope for him is that he learns how to be a plumber or an electrician or a carpenter or a contractor.

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**FT:** Really? Not a lawyer like his dad?

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**JF:** Yeah, because — well no, he certainly can, I'm not going to dissuade him from it and I'm not necessarily going to point him in one of those other directions. But I always say that because there's always going to be need for somebody to build a house, or repair my electrical system or unclog my pipes.

There's always going to be a need for certain things in this society and I think that it's incumbent on every child and every parent to be able to sit down and say, "Okay, where is there a need? Where is there a long term career path because if we're going to invest six figures in school, we need to have some understanding of where we're going with this? What's the goal of education?"

I'm certainly not down playing, going to school and taking English classes or philosophy or sociology because I think that that's important to the way that we function as a society but I don't think that that should necessarily drive your decision of what college to go to.

This is something that you need to have a return on investment for. If you don't then maybe you need to look in another direction or don't go directly to college at 18. There are a lot of kids who are looking at gap years which I understand is fairly big in Europe. There's a reason for it. You don't know what you want to be when you're 18 years old.

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**FT:** No, you don't even know — it's constantly evolving if you're a human being.

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**JF:** Sure.

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**FT:** You were talking earlier, we talked earlier about what needs to change and I think this is another change that's happening is people, students, are opening up their minds to the possibilities that are beyond just traditionally like going to college right after high school, to a four year school and taking out the loans. There's other ways and I think the world is adapting and understanding what's happening and will appreciate that maybe you took a different course.

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**JF:** Yeah, absolutely. You've got so much competition to get into even mid-level schools at this point that more and more admissions officers are looking at, they're looking at your application the same way that an employer is looking at a resume. What have you done so far? What are your interests? Why is this a good fit for you?

I think that as kids open up their minds to the other opportunities that exist, I think that they're going to find better fits for themselves in colleges. They're going to find better fit for themselves long term, and you're going to see fewer people getting to their mid-40's and looking back and saying, "Oh my gosh, I made a terrible career move and I can't get out of it now." So I think that ultimately, it's better for the individual and I think that it's better for us as a society.

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**FT:** So Jay, we have a few minutes left, what is maybe your biggest piece of advice for a student loan borrower right now who just feels trapped, financially trapped?

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**JF:** The best advice is to look at what loans you have, look at your federal loans and your private loans and sit down and determine what it is that you can do to bring those costs down. Look at your federal loans and investigate your income dependent repayment options. Investigate what you can be doing, perhaps as a career move that may put you in a better position.

Determine whether or not there is a better employment situation for you, maybe going into public service and taking a 10% hit on your income in exchange for getting rid of six figures worth of debt a little bit down the road. Maybe that makes some sense and maybe that also affords you a better quality of life.

With respect to the private student loans, I think you need to be able to sit down and start having those financial conversations with yourself as well as with people around you and professionals who may be able to point you in a better direction in terms of bringing down your

expenses and establishing a better budget for yourself to enable you to make those payments more easily.

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**FT:** Yeah, you cannot go through this alone. I know this is a very emotional and sometimes embarrassing financial aspect of our lives that, “Oh my gosh, I can’t believe I took out all this debt and I don’t make enough to support this.” Just know that you are not alone, credit card debt is now second to student loan debt in terms of the volume out there.

So you’re definitely not alone Jay. I thank you for the great work that you do. If you are interest in learning more about Jay and getting the help that you need, definitely check out [Consumerhelpcentral.com](http://Consumerhelpcentral.com). Not to inundate you more Jay with more but hey, sorry and you're welcome I guess is what I mean.

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**JF:** The information’s there and it’s there for a reason and I want as many people to be able to take advantage of it as they possibly can, so that hopefully they don’t need to call me.

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**FT:** Yeah, All right Jay, thank you so much and hopefully we’ll have you back on to learn more about you, the man behind the great work that you’re doing. We didn’t even get time to ask you about your financial philosophy, but this was I think really incredibly helpful and I hope will help at least a few people on the show listening. Again, [Consumerhelpcentral.com](http://Consumerhelpcentral.com) is the site. Thanks a lot Jay.

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**JF:** Thanks Farnoosh.

[END]