



**Office of Appeals**  
**U.S. Department of Housing and Urban Development**  
**Washington, D.C. 20410-0001**

In the Matter of:

**Adrienne Starr,**  
Petitioner

HUDOA No. 10-H-CH-AWG12  
Claim No. 721000569

Adrienne Starr  
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Pro se

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For the Secretary

**DECISION AND ORDER**

On October 28, 2009, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States Government.

The administrative judges of this Office have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.*

Pursuant to 31 C.F.R. § 285.11(f)(4), on November 3, 2009, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage

withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated November 3, 2009.)

### **Background**

On February 21, 2000, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") in the amount of \$5,824.55, promising to repay a partial claim paid on her behalf by the Secretary to cure the arrearages on her primary FHA-insured mortgage and to avoid the foreclosure of her home. (Secretary's Statement ("Sec'y Stat."), filed November 18, 2009, ¶ 1, Ex. 1.)

Paragraph 3 of the Note cites specific events which make the debt become due and payable. One of those events is the payment in full of the primary note, which was insured against default by the Secretary. (Sec'y Stat., ¶ 3, Ex. 1, ¶ 3(A)(i).) On June 1, 2000, the FHA mortgage insurance on Petitioner's primary note was terminated when the lender informed the Secretary that the note was paid in full. (*Id.* at ¶ 4, Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of the United States Department of Housing and Urban Development, HUD ("Dillon Decl."), ¶ 4, dated November 17, 2009.)

Petitioner is currently in default on the Note. (Sec'y Stat., ¶ 6, Ex. 2, Dillon Decl., ¶ 5.) The Secretary has made efforts to collect from Petitioner other than by administrative wage garnishment but has been unsuccessful. (*Id.*) The Secretary has filed a Statement in support of his position that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$3,156.52 as the unpaid principal balance as of November 2, 2009;
- (b) \$0.00 as the unpaid interest on the principal balance at 4% per annum through November 2, 2009; and
- (c) interest on the principal balance from November 2, 2009 at 4% per annum until paid.

(Sec'y Stat., Ex. 2, Dillon Decl., ¶5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated December 16, 2008, was sent to Petitioner. (Sec'y Stat., ¶ 8, Ex. 2, Dillon Decl., ¶ 6, Ex. A.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD but, to date Petitioner had not entered into such an agreement. (Sec'y Stat., ¶ 9, Ex. 2, Dillon Decl., ¶ 7.)

A Wage Garnishment Order dated January 16, 2009 was issued to Petitioner's employer. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 8, Ex. B.) Based on the issuance of the garnishment order, Petitioner's pay has been garnished 19 times totaling \$4,268.45. (Sec'y Stat., ¶ 11, Ex. 2, Dillon Decl., ¶ 9.) Petitioner has not provided HUD with a copy of her pay stub. (Sec'y Stat., ¶ 11, Ex. 2, Dillon Decl., ¶ 10.) The Secretary proposes a repayment schedule at 15% of Petitioner's disposable pay pursuant to 31 C.F.R. § 285.11(i)(A). (Sec'y Stat., ¶ 12, Ex. 2, Dillon Decl., ¶ 11.)

The Note was secured by a Deed of Trust, dated February 17, 2000, recorded in the Arapahoe County Recorder's Office on February 29, 2000. (Sec'y Stat., ¶ 13, Ex. 2, Dillon Decl., ¶ 10, Ex. C). A copy of the Deed of Trust securing this debt was recorded prior to the time Petitioner sold her home. (Sec'y Stat., ¶ 13, Ex. 2, Dillon Decl., ¶ 10, Ex. C.)

### Discussion

Petitioner challenges the existence and enforceability of the alleged debt. Petitioner contends that (1) she is not liable for the alleged debt because there were no outstanding liens at time of the sale of her home; and (2) the proposed repayment plan would cause her and her family financial hardship. (Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed October 28, 2009.) Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists or that the terms of the proposed repayment schedule would cause her financial hardship.

First, Petitioner disputes the debt: "I believe I am being wrongfully garnished for a HUD lien on property I sold in May, 2000. According to the documents obtained from Title America, the title company that handled the sale, any liens were settled at the time of closing." (Pet'r Hr'g Req.) As support, Petitioner submitted copies of documents from the sale of her home that included copies of the Settlement Statement, a Quit Claim Deed, Deed of Trust, and Payoff Demand Statement. (*Id.*, attach.; Petitioner's December Letter, attach. ("Pet'r Dec. Ltr."), filed December 4, 2010.) While such documentation substantiates that a settlement occurred on Petitioner's property, Petitioner failed to provide sufficient and credible evidence to support her assertion that proceeds from the sale of the property at settlement were used to pay off the alleged debt that is the subject of this proceeding.

On the other hand, the Secretary argues "[W]hile the closing information related to the sale of the Halifax property demonstrated that your primary mortgage with Wells Fargo and your second mortgage with Citi was satisfied, it does not demonstrate that the Partial Claims Promissory Note that you executed on February 17, 2000 has been satisfied." (Secretary's Response to Petitioner's December letter, filed December 4, 2009.) As proof, the Secretary submitted a copy of a Partial Claims Promissory Note dated February 17, 2000 and bearing Petitioner's signature, in which Petitioner promised to pay the debt that is the subject of this proceeding. (Sec'y Resp., Attach.) The Secretary also submitted, as proof, a copy of the settlement statement that reflected a payoff of the first mortgage loan to Wells Fargo and a payoff of the second mortgage loan to Citibank, but not a pay off of the debt owed to HUD. (*Id.*, Attach.)

This Office previously has held that "[i]n order for Petitioner not to be held liable for the debt, there must either be a release in writing from the lender specifically discharging Petitioner's obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release." *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986)). Here, Petitioner has not presented any documentary evidence to prove that the lender or HUD was a party to a written

release or an agreement to release Petitioner from liability, and further, Petitioner has not submitted evidence to refute that submitted by the Secretary.

This Office has consistently held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable.” *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, Petitioner’s assertion that the debt is unenforceable because “any liens were settled at the time of closing” must fail for lack of proof.

Second, Petitioner claims the Secretary’s proposed repayment schedule will cause a financial hardship to Petitioner and her family. (Pet’r Oct. Ltr.) Petitioner states “I have already been foreclosed on my current mortgage and am struggling to maintain rent at my new rental.” (Pet’r Hr’g Req.) As evidence, Petitioner has submitted copies of her pay statements from December 2008 through December 2009, her rental agreement showing monthly rental charges for the term beginning September 11, 2009 and ending December 31, 2010, her bank statements with various payments highlighted from December 2008 through January 2010. Petitioner asserts that she “do[es] not have copies of bills” because “[she] had been the victim of identity theft,” and thus, “shredded a lot of paperwork following the discovery [that she was an identity theft victim] and [is] submitting what [she] can put [her] hands on to substantiate [her] claim of hardship.” (Petitioner’s March Letter (“Pet’r Mar. Ltr.”), filed March 9, 2010.) Petitioner included a copy of Incident/Investigation Report with the Mesa Police Department, dated October 18, 2009. (*Id.*, attach.)

Petitioner’s household consists of herself and her 29-year-old son, Jeffrey Starr, Jr., whom she lists as her adult dependent. (Pet’r Mar. Ltr.) Petitioner claims that her son “had been incarcerated from 2001 until 2003 and came to live with [her] upon his release. Due to the incarceration, he has been unable to obtain or retain work. To substantiate his residence with [her], [Petitioner] can only provide postal mail addressed to him. He was offered a job by Direct Alliance in November 2009 (copy attached) and was let go on January 2, 2010 when his background check came back. He has no current income.” (*Id.*)

On average, Petitioner’s gross earning is approximately \$3,671.29 per month. (Pet’r Mar. Ltr., Attach.) The Secretary is authorized to garnish “up to 15% of the debtor’s disposable pay,” which is determined “after the deduction of health insurance premiums and any amounts required by law to be withheld...[which include] amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.” 31 C.F.R. §§ 285.11(c) and (i)(2)(i)(A). After subtracting allowable deductions, which average approximately \$475.54 for Federal tax, \$232.75 for Social Security, \$53.94 for Medicare, and \$100.23 for State tax.<sup>1</sup> Petitioner is left with \$2,808.84 as her monthly disposable income. (Pet’r Mar. Ltr., Attach.) Petitioner’s federal levy, garnishment owed to the Department of Education and bus pass will not be credited towards Petitioner’s amounts for deductions because, by definition, they are not considered allowable deductions as set forth in 31 C.F.R. § 285.11(c).

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<sup>1</sup> Health insurance premiums have already been deducted from Petitioner’s total earnings before calculating Petitioner’s gross pay on the pay stub.

Petitioner also has provided credible evidence of household expenses that consists of rental agreement, bank statements and other miscellaneous documents. These monthly expenses include \$1,064.83 for rent, an average of \$98.52 for automobile/home insurance, an average of \$125.21 for electric, an average of \$303.09 for food, and an average of \$497.83 for car payments. (See Pet'r Mar. Ltr., Attach.) Petitioner will be credited only \$100 for phone expenses because Petitioner has failed to submit sufficient documentary evidence to substantiate the monthly average of approximately \$185.00 phone expenses as a basic subsidy for living expenses. As a result, Petitioner's essential expenses total \$2,189.47 per month.

Petitioner has also submitted additional expenses that show payments for a refrigerator, \$109.09 monthly; "paycheck loans [Petitioner has] been using to assist in meeting monthly expenses," \$717.77 monthly average; "Aarons Sal3136 Purchase," \$140.56 monthly average; and other one-time only expenses such as "legal question re: garnishment," \$48.00 "[apartment rental] application fees," \$140.72; "home mortgage," \$829.00, "hardship withdrawal – deposit," \$1,500.00; "cash 4 keys payment," \$850.00; and numerous other expenses. Such expenses are not considered to be essential household expenses, and, based upon the evidence presented by Petitioner, most were only one-time expenses already paid. Without sufficient evidence to verify the relationship of these expenses to essential household expenses, I am unable to determine whether these expenses, mostly one-time only expenses, should be included towards Petitioner's monthly expenses, and thus these expense items will not be included. As a result, Petitioner's total amount for expenses remains at \$2,189.47.

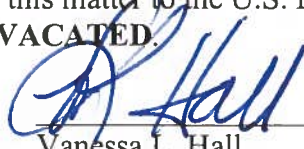
Pursuant to 31 C.F.R. § 285.11(k)(3), this Office has the authority to order garnishment at a lesser rate based upon the record before it, particularly in cases where financial hardship is found. The Secretary has proposed "garnishment in the amount of 15% of Petitioner's disposable income is reasonable." (Sec'y Stat., ¶ 12.) Petitioner's monthly income of \$2808.84, exceeds her essential expenses per month of \$2,189.47 by \$619.37. A 15% garnishment rate of Petitioner's monthly disposable income, as proposed by the Secretary, would equal \$421.33 per month, thereby increasing Petitioner's monthly expenses from \$2,189.47 to \$2,610.80, and leaving Petitioner with a positive balance of \$198.04, an amount sufficient to cover any remaining miscellaneous expenses incurred on a monthly basis. Therefore, I find that imposing an administrative wage garnishment against Petitioner does not create a financial hardship, and thus Petitioner remains legally obligated to pay the alleged debt at the garnishment rate proposed by the Secretary.

### **ORDER**

Upon consideration of the arguments, allegations, and documentary evidence set forth above, I find that the debt is legally enforceable against Petitioner in the amount claimed by the Secretary. It is hereby

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15% of Petitioner's disposable income.

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.



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Vanessa L. Hall  
Administrative Judge

July 22, 2010