



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

In the Matter of:

Patsy Jones,

Petitioner

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: HUDOA No. 10-H-CH-AWG18
: Claim No. 721004773

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Pro se

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For the Secretary

DECISION AND ORDER

On November 30, 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) and (10), on December 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.

Background

On June 4, 2001, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$4,650.70 securing a partial claim paid on her behalf by the Secretary to pay the arrearages on her primary FHA-insured mortgage and to avoid the foreclosure of her home. (Secretary's Statement ("Sec'y Stat."), filed January 22, 2010, ¶ 1, Ex. 1.) The Note cited specific events that made the debt become due and payable, one of these events being when Petitioner has paid in full all amounts due under the primary note and related mortgage insured by the Secretary. (Sec'y Stat., ¶ 2, Ex. 1, ¶ 4(A).) On or about November 28, 2003, the FHA mortgage insurance on the first mortgage was terminated as the mortgagee indicated the mortgage was paid in full. (Sec'y Stat., ¶ 4, Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated January 21, 2010, ¶ 4.)

Therefore, pursuant to the terms and conditions of the Note, payment is due in full for the partial claims note because the amounts due under the primary note have been paid in full. (Sec'y Stat., ¶ 4, Ex. 2, Dillon Decl., ¶ 4.) The Secretary has made efforts to collect from Petitioner but Petitioner remains delinquent. (Sec'y Stat., ¶ 6, Ex. 2, Dillon Decl., ¶ 5.) Petitioner is justly indebted to HUD in the following amounts:

- (a) \$4,650.70 as the unpaid principal balance as of December 31, 2009;
- (b) \$496.00 as the unpaid interest on the principal balance at 4% per annum through December 31, 2009;
- (c) interest on said principal balance from January 1, 2010 at 4% per annum until paid.

(Sec'y Stat., ¶ 7, Ex. 2, Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated November 2, 2009 was sent to Petitioner. (Sec'y Stat., ¶ 8, Ex. 2, Dillon Decl., ¶ 6.) As of January 21, 2010, Petitioner has not entered into a written repayment agreement. (Sec'y Stat., ¶ 9, Ex. 2, Dillon Decl., ¶ 7.) Petitioner provided a copy of her bi-weekly pay statement for the period ending December 15, 2009. (Sec'y Stat., ¶ 10, Ex. 2, Dillon Decl., ¶ 8, Ex. A.) As a result, the Secretary proposes that 15% of Petitioner's disposable income, or \$207.04 bi-weekly, is a reasonable amount to garnish pursuant to 31 C.F.R. § 285.11(i)(A). (Sec'y Stat., ¶ 11, Ex. 2, Dillon Decl., ¶ 8.)

Discussion

Petitioner claims the alleged debt that is the subject of this proceeding does not exist and that she does not owe the debt because 1) Petitioner's debt to HUD was paid as a result of the sale of her home; and 2) an administrative wage garnishment would cause a financial hardship.

First, Petitioner argues that the alleged debt to HUD is unenforceable because the debt "should have been paid at closing by First American Title Company." (Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed November 30, 2009.) Petitioner further asserts, "This debt was due at closing, and should have been disbursed by First American Title Co. Instead they sent all funds to mortgage company. Contact with this company has not been successful." (Pet'r Hr'g Req.) Petitioner, however, has failed to provide the necessary documentation in support of her claim. While Petitioner has provided documents relating to the closing of the sale transaction of her home, such as Closing Affidavit, Final Statement, General Warranty Deed with Vendor's Lien, Petitioner has provided no evidence that the Note at issue has been paid in full. (Pet'r Hr'g Req., attach.)

The Secretary argues, however, that Petitioner has not provided any evidence that Petitioner's debt to HUD was paid as a result of the sales transaction. The Secretary provided a copy of a Settlement Statement and the pay off letter from Petitioner's settlement and states "The November 25, 2003 HUD 1 Settlement Statement provided by Petitioner indicates that \$63,414.74 was paid to Aurora Loan Services, Inc. when Petitioner sold her home. There is no indication that Petitioner's debt to HUD was paid as a result of this sales transaction. The \$63,417.74 paid to Aurora at the time of closing did not include the Partial Claim Debt owed to HUD." (Sec'y Stat., Ex. #2, ¶ 9, attached Ex. A and B; Dillon Decl., ¶ 9, Ex. B.)

Petitioner was ordered three times to present evidence that the alleged debt does not exist and is unenforceable, but Petitioner failed to do so. (Notice of Docketing, Order, and Stay of Referral, dated January 6, 2010; Order, dated January 20, 2010; and Order to Show Cause, dated February 19, 2010.) Without evidence from Petitioner to dispute the Secretary's argument and to prove that the Note at issue has been paid in full, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

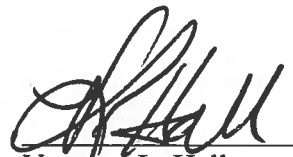
Second, Petitioner argues that the Secretary's proposed repayment schedule would result in financial hardship for Petitioner. Petitioner states "I am a widow with a Masters degree in Social Work and have one child that I am putting through college. This debt would place a huge burden on my already strapped finances." (Pet'r Hr'g Req.) As provided in 31 C.F.R. § 285.11(f)(8)(ii). Petitioner may present evidence that the terms of the Secretary's proposed repayment schedule would cause a financial hardship.

Although Petitioner claims that the administrative wage garnishment would cause a financial hardship, she has failed to submit documentary evidence to support her position, despite being ordered three times to do so. (Notice of Docketing, Order, and Stay of Referral, dated January 6, 2010; Order, dated January 20, 2010; and Order to Show Cause, dated February 19, 2010.) Without such evidence Petitioner's claim fails for lack of sufficient and credible documentary evidence. This Office has held that assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due or enforceable. *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, I find Petitioner's claim again fails for lack of proof.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be past due and enforceable in the amount alleged by the Secretary. The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. 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 \$207.04 bi-weekly or 15% of Petitioner's disposable income.

A handwritten signature in black ink, appearing to read 'V. Hall', is written over a horizontal line.

Vanessa L. Hall
Administrative Judge

June 18, 2010