



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

In the Matter of:

**Yvonne A. Crocker, a/k/a
Yvonne C. Cook,**

Petitioner

HUDOA No. 10-H-CH-AWG20
Claim No. 7800215120B

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For the Secretary

DECISION AND ORDER

On November 23, 2009, Petitioner made a request for a hearing concerning a proposed repayment schedule incident to a wage garnishment order sought by the Secretary relating to a debt owed to the U.S. Department of Housing and Urban Development ("HUD") that Petitioner claims does not exist. 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 Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b).

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. (*See* 24 C.F.R. § 17.170(b).) 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.) As a result, pursuant to 31 C.F.R. § 285.11(f) (4) this Office, on December 9, 2009, stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral.)

Background

On or about August 19, 1990, Petitioner (also known as Yvonne C. Cook) and her ex-husband executed and delivered to Green Tree Acceptance of Texas, Inc. a Note ("Note"), in the amount of \$14,900.00 that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. (Secretary's Statement ("Sec'y Stat."), filed December 28, 2009, ¶¶ 2-3; Ex. 1; Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated December 18, 2009, ¶ 3.) Petitioner filed for Chapter 7 bankruptcy on or about April 10, 1995 and was discharged on or about June 5, 1996. (Sec'y Stat., Ex. 2, Dillon Decl. ¶ 8.) Prior to discharge, "Petitioner and her [then] spouse signed a Reaffirmation Agreement-Deed of Trust ("Agreement") dated June 7, 1995 in favor of Green Tree Financial Corporation in the amount of \$13,725.64. (Sec'y Stat., Ex. 2, Dillon Decl., ¶ 8, Ex. B.) Seventeen payments were made to Green Tree Financial Corp after the Reaffirmation Agreement and prior to default as evidenced by the Title I Claim for Loss dated August 29, 1997. (Sec'y Stat., Ex. 2, Dillon Decl., ¶ 8.) Thereafter, however, Petitioner failed to make payments as agreed in the Deed of Trust, which was subsequently assigned to HUD under the regulations governing the Title I Insurance Program. (Sec'y Stat., ¶ 5; Ex. 3; Ex. 2, Dillon Decl. ¶ 3.)

HUD has attempted to collect the amounts due under the Note, but Petitioner remains in default. (Sec'y Stat., ¶ 6; Ex. 2, Dillon Decl. ¶ 4.) Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$12,561.57 as the unpaid principal balance as of November 30, 2009;
- (b) \$8,459.03 as the unpaid interest on the principal balance at 5% per annum through November 30, 2009; and
- (c) interest on said principal balance from December 1, 2009, at 5% per annum until paid.

(Sec'y Stat., ¶ 9; Ex. 2, Dillon Decl., ¶ 4.) A Notice of Intent to Initiate Administrative Wage Garnishment, dated November 18, 2009, was mailed to Petitioner. (Sec'y Stat., ¶ 7; Ex. 2, Dillon Decl., ¶ 5.) Petitioner was afforded an opportunity to enter into a written repayment agreement under terms agreeable to HUD pursuant to 31 C.F.R. 285.11(e)(2)(ii). (Sec'y Stat., ¶ 7; Ex. 2, Dillon Decl., ¶ 6.) As of December 18, 2009, Petitioner had not entered into a written repayment agreement with HUD. (Id.)

Several attempts were made to obtain Petitioner's current monthly pay statement. (Sec'y Stat., ¶ 15; Ex. 2, Dillon Decl., ¶ 9.) As of December 18, 2009, Petitioner had not provided HUD with a current pay statement. (Id.) The Secretary proposes a repayment schedule of \$585

per month which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards (31 C.F.R. § 901.8) , or, alternatively, 15% of the Petitioner's disposable income. (Sec'y Stat., ¶ 15; Ex. 2, Dillon Decl. ¶ 9.)

Discussion

31 U.S.C. §§3716 and 3720A provide federal agencies with administrative wage garnishment as a means of collecting debts owed to the United States Government. 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 amount of the alleged debt is incorrect. Petitioner challenges the existence and amount of the alleged debt because: 1) there is a name discrepancy regarding her name as the alleged debtor, 2) she is divorced; 3) Petitioner cannot remember that a Title I Property Improvement Loan from HUD existed, 4) the debt was discharged by bankruptcy, and 5) she never received prior notice of this claim. Petitioner must provide more than a mere allegation that the debt does not exist, but must provide some documentary evidence supporting her claim. *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996).

Petitioner first claims that she does not owe the debt because “[she does] not now, nor ha[s] [she] ever been known or held [her]self out to be Yvonne Cook Crocker.” (Pet’r. Hr’g. Req.) As support, Petitioner referred to a copy of a divorce decree in her Hearing Request, but failed to submit actual documentary evidence to otherwise prove she was never “Yvonne Cook Crocker.” (Pet’r Hrg. Req., ¶ 2b.) On the other hand, the Secretary has produced, along with his Statement, documentary evidence that included the Note and Reaffirmation Agreement-Deed of Trust (“Deed of Trust”) that “bear[s] the debtor’s name and signature as “Yvonne C. Cook” and “Yvonne Crocker Cook,” respectively.” (Sec’y Stat., Ex. 1; Ex. B.) Upon further review of the Note and Deed of Trust, the name “Yvonne Cook Crocker,” as alleged by Petitioner, is not evident on the face of either document. Instead, the name on both documents alleged by the Secretary to be Petitioner’s signature on both documents is “Yvonne *Crocker Cook*,” a name that remains unchallenged by Petitioner. (emphasis added.) (Sec’y Stat., ¶ 11, Ex. 1; Ex. B.) As such, without Petitioner presenting the necessary additional evidence to refute the evidence produced by the Secretary, Petitioner’s claim fails for lack of sufficient proof.

Next, Petitioner claims that she does not owe the debt because she is now divorced and “any such loan would have been contracted during the course of my marriage. Therefore, I would not be liable for the amount [the Secretary] ha[s] stated.” (Pet’r. Hr’g. Req.) Petitioner’s contention that she executed the loan agreement during her marriage is meritless because her status as a co-signor to the loan legally obligates her to pay the subject debt. This Office has previously held that “the Secretary may proceed against any cosigner for the full amount of the debt” because each cosigner is jointly and severally liable for the obligation. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). To prove that she is not liable for the debt, Petitioner must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988). In the instant case, Petitioner and her ex-husband would be considered co-signors who would be held jointly and severally liable for the legal obligation that is the subject of this proceeding, unless Petitioner otherwise produces

evidence of a written release from her obligation to pay the alleged debt. Without such proof of a written release, I find that Petitioner, as a co-signor, remains legally obligated to pay the alleged debt.

Petitioner also claims "I don't recollect any Title I Property Improvement Loan from HUD or anyone." (Pet'r. Hr'g. Req.) Petitioner's inability to recollect the existence of the alleged debt is, alone, insufficient as a basis for releasing Petitioner from the alleged debt because a debtor's ignorance of the debt obligation is not a valid defense against collection of the debt. (See *Edgar Joyner, Sr.*, HUDBCA 04-A-CH-EE052 (June 15, 2005)(Petitioner's ignorance of the lawful interest applied to the outstanding principal does not relieve Petitioner of his obligation to pay the principal due on the loan as well as for all the interest which has accrued); *James F. Walsh*, HUDBCA No. 87-2230-G560 (March 13, 1987) (Petitioner's professed ignorance of the identity of the insurer of the note, even if true, is no defense to the Government's claim). Thus, I find this claim is without merit.

Petitioner then argues that the debt was discharged by bankruptcy. Petitioner writes, "My then husband and I filed bankruptcy in 19?? and it was discharged in ????. Therefore, I don't believe that I owe HUD any money." (Pet'r. Hr'g. Req.) Petitioner never submitted evidence to substantiate her claim of bankruptcy despite being ordered by this Office on three occasions to do so. (Notice of Docketing, p. 2, dated December 9, 2009; Order, dated January 6, 2009; Order to Show Cause, dated February 5, 2009.) To date, Petitioner still has failed to comply with the Orders issued by this Office. But, the Secretary has filed documentary evidence of a "Reaffirmation Agreement demonstrating Petitioner's liability despite a bankruptcy discharge." (Sec'y Stat., Ex B). Again, due to Petitioner's insufficient documentation, her claim of bankruptcy fails for lack of proof.

Additionally, Petitioner claims the debt does not exist because she "never received any prior notice of this claim." (Pet'r. Hr'g. Req.) The only notice required by regulation for Petitioner is the issuance of a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings. (See 31 C.F.R. § 285.11 (e)(1)-(3).) Upon review of the record, Petitioner was issued a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings on November 19, 2009. Petitioner responded to that Notice by submitting a request for the hearing that is now before this Court. (Pet'r Hr'g. Req., Sec'y Stat., ¶ 7; Ex. 2, Dillon Decl., ¶ 5.) As such, Petitioner's argument that the debt is unenforceable because she never received prior notice is groundless since the record reflects that Petitioner responded to the same Notice she claimed she never received.

Finally, Petitioner asserts that the terms of the proposed repayment schedule would create a financial hardship. (Pet'r. Hr'g. Req.) Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), the burden of proof of hardship falls on Petitioner to present evidence that the terms of the proposed repayment schedule would, in fact, cause financial hardship. Despite being ordered to provide documentary evidence of financial hardship, Petitioner failed to comply with the Order. (Notice of Docketing, pp. 2-3, dated December 9, 2009). Without sufficient documentary evidence from Petitioner, this Office is unable to determine whether the administrative wage garnishment sought by the Secretary would constitute a financial hardship for Petitioner as required under 31 C.F.R. § 285.11(f)(8)(ii). *Mary Baker*, HUDBCA No. 05-D-NY-AWG06 (March 23, 2005). Therefore, I find Petitioner's claim of financial hardship also fails for lack of proof.

As a final point, Rule 26.4(c) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*. (emphasis added).

Accordingly, because Petitioner has failed to comply with any of the Orders issued by this Office, I find that Petitioner's non-compliance to the Orders issued by this Office provides a basis for rendering a decision against Petitioner pursuant to Rule 26.4(c) of Title 24 of the Code of Federal Regulations.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed 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 at 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

March 25, 2010