



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

In the Matter of:

Mable Norse,

Petitioner.

HUDOA No. 10-H-CH-AWG69
Claim No. 721006016

Mable Norse
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Sacramento, CA 95823

Pro se

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For the Secretary

DECISION AND ORDER

On June 23, 2010, 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 are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if 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 an undue 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 June 25, 2010, this Office stayed the issuance of a wage

withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral, dated June 25, 2010.)

Background

On August 14, 2000, Petitioner executed a Partial Claims Promissory Note (“HUD Note”) in the amount of \$7,543.42 in favor of the Secretary. (Sec’y Stat. ¶¶ 1-2) In return, HUD advanced funds to the FHA-insured lender to bring Petitioner’s mortgage current and to avoid foreclosure on the collateral property. (Sec’y Stat. ¶ 1.) Pursuant to the terms of the HUD Note, the HUD Note becomes immediately due and payable, “when the original FHA mortgage matures, when the borrower pays the primary Note in full, when the maturity date of the primary [n]ote has been accelerated, when the [primary note] or related security instrument is no longer insured by the Secretary, or when the property is no longer occupied by the purchaser as his or her principal residence. (Sec’y Stat. ¶ 2; Sec’y Stat. Ex. 1, Note.) On or about August 24, 2001, the FHA mortgage insurance on the primary note and related mortgage was terminated, as the mortgagee indicated that the loan was paid in full. (Sec’y Stat. ¶ 3.)

The Secretary has filed a statement alleging that, pursuant to the terms and conditions of the HUD Note, the debt is now past due and legally enforceable. (Sec’y Stat. ¶ 4.) The Secretary has attempted to collect the amounts allegedly due under the HUD Note, but has been unsuccessful and claims that Petitioner is indebted to HUD in the following amounts:

- (a) \$3,913.30 as the unpaid principal balance as of March 28, 2010;
- (b) \$19.56 as the unpaid interest on the principal balance at 3% per annum through March 30, 2010; and
- (c) interest on said principal balance from April 1, 2010, at 3% per annum until paid.

(Sec’y Stat., Ex. 2, Decl. of Brian Dillon ¶ 5.)

A Notice of Intent to Collect by Wage Garnishment was mailed to Petitioner on March 5, 2010. (Sec’y Stat. ¶ 7.) Petitioner was afforded the opportunity to enter into a repayment agreement but declined to do so. (Sec’y Stat. ¶ 8.) Attempts were made to obtain documentation of Petitioner’s income but Petitioner declined to comply. (Sec’y Stat. ¶ 10.) The Secretary proposes a repayment schedule of \$110.00 per month or 15% of Petitioner’s disposable income. (*Id.*)

Discussion

Petitioner disputes the existence of the debt and claims that she does not owe the debt. (Pet’r’s Hr’g Req.) Specifically, Petitioner argues that, “[the] loan was sold to another bank[.] [T]he loan was \$102,798.84 and was sold for \$111,551.00. [T]his was pay [sic] off [in] 2005.” (*Id.*) In support of her argument, Petitioner submitted as documentary evidence: an interest statement from Wells Fargo Home Mortgage (“Wells Fargo”); an annual tax and interest statement from First Horizon Home Loan Corporation (“First Horizon”); and various loan documents.


Petitioner argues that her debt in this case was paid off when she refinanced her loan in 2005. However, the only document submitted by Petitioner that references her debt to HUD is the document titled, "Complete Debtor History." (Pet'r's Hr'g Req. Attachs.) This document specifically shows that as of March 29, 2010, Petitioner had not paid her debt to HUD in full. (*Id.*) The other documents submitted by Petitioner only reference loans from Wells Fargo and First Horizon, and such loans are not the subject of these proceedings. The Secretary, on the other hand, provided as evidence a copy of Petitioner's HUD-1 settlement statement from when she refinanced in 2005. (Decl. of Brian Dillon, Ex. B.) The HUD-1 settlement statement shows a payoff of \$107,338.08 to First Horizon and several disbursements made to various creditors. However, there was no indication of a partial claim payment to HUD, or that Petitioner's legal obligation to HUD was paid off.

In order for Petitioner to prove that she does not owe the debt, Petitioner must submit evidence of either a written release from HUD showing that Petitioner is no longer liable for the debt, or evidence of valid or valuable consideration paid to HUD. *In re Cynthia Ballard Rachall*, HUDOA No. 09-H-AWG103 at 3 (August 6, 2009) (*citing William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000)). Petitioner has not submitted any such evidence and therefore has failed to prove that the debt in this case has been satisfied. This Office has held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable." *In re Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (*citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Accordingly, this Office finds that the debt that is the subject of these proceedings is past due and legally enforceable against Petitioner.

ORDER

For the reasons set forth above, 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 to the extent authorized by law.



Vanessa L. Hall
Administrative Judge

August 20, 2010