



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

In the Matter of:

NANCY BRIGNONI,
Petitioner

HUDOA No. 10-H-NY-AWG11
Claim No. 721005511

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For the Secretary

DECISION AND ORDER

Petitioner filed a request for hearing concerning a proposed administrative wage garnishment relating to 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 October 21, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

Background

On February 21, 2000, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") in the amount of \$3,941.58, in exchange for foreclosure relief being granted by the Secretary. (Secretary's Statement ("Sec'y. Stat."), filed November 3, 2010, ¶ 2, Ex. A. Note.) Paragraph 3 of the Note cites specific events which make the debt become due and payable. (Sec'y. Stat., ¶ 3.) One of those events is the payment in full of the primary note, which was insured against default by the Secretary. (*Id.*; Ex. A, Note at ¶ 3(A) (i)). The Note also specified that Petitioner was to make payment to HUD at the Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, S.W., Washington, DC 20410 or any such other place as Lender may designate in writing by notice to Borrower. (Sec'y. Stat., ¶ 5; Note at ¶ 3(B).

On or around August 1, 2000, the FHA insurance on Petitioner's primary note was terminated when the lender informed the Secretary that the primary note was paid in full. (Sec'y. Stat., ¶ 4; Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated October 29, 2010, ¶ 4.) The Secretary alleges that Petitioner failed to make payment on the Note at the place and in the amount specified in the Note and Petitioner's debt to HUD is therefore delinquent. (Sec'y. Stat. ¶ 6.)

The Secretary has made efforts to collect this alleged debt from the Petitioner, but has been unsuccessful. (*Id.* at ¶ 7; Dillon Decl., ¶ 5.) Petitioner is allegedly indebted to HUD in the following amounts:

- a) \$2,154.36 as the unpaid principal as of September 30, 2010;
- b) \$170.62 as the unpaid interest on the principal balance at 5% per annum through September 30, 2010; and
- c) interest on said principal balance from October 1, 2010, at 5% per annum until paid.

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

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated September 3, 2010 was sent to Petitioner. (Sec'y. Stat., ¶ 8.) In accordance with 31 C.F.R. §285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms but did not do so. (*Id.* at ¶ 9). Despite numerous attempts to obtain Petitioner's current pay stub, she has not provided one to HUD. (*Id.* at ¶ 12.) The Secretary proposes a repayment schedule of \$100.00 per month, which will liquidate the debt in three years, or 15% of Petitioner's disposable pay. (*Id.*)

Discussion

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 may also 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. 31 C.F.R. § 285.11(f)(8)(ii).

In her Hearing Request, Petitioner initially disputed the existence of the debt and submitted a copy of a Wells Fargo Payoff Statement and a HUD-1 Settlement Statement to prove that the debt had been satisfied. (Pet'r's Hr'g. Req., filed October. 19, 2010, Attachs.) In response, the Secretary stated that:

The Settlement Statement produced by Petitioner in her request for a hearing shows payoff of Petitioner's first mortgage to Norwest in the amount of \$36,057.31 and the payoff of Petitioner's second mortgage to Chocopee in the amount of \$14,746.93. Neither of these amounts includes the amount due on HUD's Partial Claims Promissory Note. In fact, nowhere [sic] in the Settlement Statement is HUD's debt even mentioned.

(Sec'y. Stat., ¶ 10.) The Secretary further stated, "[m]ore importantly, Petitioner has produced no evidence to show that she actually paid HUD's debt as a result of the sale." (*Id.* at ¶ 11.)

On January 21, 2011, Petitioner filed a copy of a "Confirmation of Loan Payoff" issued by Wells Fargo, which confirmed that Wells Fargo "received and processed the funds necessary to pay [Petitioner's] loan in full." (Letter from Pet'r's Counsel, filed January 21, 2011, Confirmation of Loan Payoff.) However, the Confirmation of Loan Payoff did not show that the funds thereafter were applied towards the balance of the debt alleged in this proceeding. As a result, the Confirmation of Payoff was insufficient as proof that Petitioner has satisfied the debt alleged in this proceeding. This Office has consistently maintained that in order to prove that Petitioner has satisfied the debt, "[t]here 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." (emphasis added) *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004) (citing *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986; *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255F262 (February 28, 1986)). Since the Confirmation of Loan Payoff was issued by Wells Fargo and not by HUD, I find that Petitioner has failed to prove that her debt to HUD was paid in full.

The record further supports that the alleged debt has not been paid in full by Petitioner based upon an admission by Petitioner's counsel during the Settlement. On January 21, 2011, this Office received a letter from Richard I. Goldman, P.C., who represented Petitioner when she sold the property that secured the FHA-insured loan. (Letter from Pet'r's Counsel.) In his letter, then counsel for Petitioner acknowledged that, "there was no separate payment made to HUD for

any monies which may have been due under the Note in question as there was no recorded mortgage or other encumbrance of record giving notice of such lien or claim.” (*Id.*) Petitioner’s counsel also stated that:

It was the belief of all parties at the time of closing that the payment of the first mortgage held by Norwest Mortgage (now Wells Fargo) according to the mortgage payoff statement generated by it was in full satisfaction of all outstanding monies due under the FHA loan(s) undertaken by Ms. Brignoni. Certainly, Ms. Brignoni had reason to believe that her obligations with regard to this property were paid in full based upon such payoff.”

(*Id.*) Petitioner’s counsel claimed that Petitioner “never heard anything more regarding this obligation...to now attempt to collect such debt together with interest and penalties is patently unjust and should be denied....” (*Id.*)

The Secretary, on the other hand, provided a copy of the Note, and a copy of the Settlement Statement dated July 31, 2000 in which it indicates that \$36,057.31 was paid to Norwest, the primary mortgage company, when Petitioner sold her home. (Sec’y. Stat., Ex. B, Dillon Decl., Ex. A., at 504.) The Settlement Statement further indicates that \$14,746.93 was paid to Chicopee, the secondary mortgage company. (Dillon Decl., Ex. A, at 505.) There was no indication on the Settlement Statement that a payment was distributed to HUD.

Furthermore, the terms of the Note bearing Petitioner’s signature clearly stated that Petitioner was obligated to pay \$3,941.58 to HUD if she has paid in full all amounts due under the FHA-insured primary Note. (Note, at p.1.) The Note also instructed Petitioner that payment should be remitted to HUD’s office in Washington, DC unless HUD designated, in writing, an alternative place to remit payment. (*Id.*) By signing the Note, Petitioner accepted and agreed to these terms contained in the Note. (*Id.* at p. 2.) Petitioner has only proven, based upon the evidence presented, that she may have forgotten about this loan, or perhaps was under the mistaken impression that it was included in the payoff to Wells Fargo. While Petitioner’s counsel at that time maintained that there was reason to believe that Petitioner’s obligations with regard to this property “were paid in full based upon such payoff,” this allegation alone, without additional documentary evidence to rebut or refute the evidence presented by the Secretary, is insufficient as proof that the alleged debt is no longer past due or unenforceable against Petitioner. Accordingly, I find that Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

Petitioner, through counsel, also claims that, “[Petitioner] is presently in severe economic straits with her sole source of income being monies received from the Massachusetts Department of Transitional Assistance in the monthly sum of \$899.00 (see copies) with which she must pay for food, heat and accommodations (her monthly rent is \$550).” (Letter from Pet’r’s Counsel.) This Office has held that financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *Shone Russell*, HUDOA No. 09-H-NY-KK15 (June 25, 2009) (*citing Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986)). However, the existence of financial hardship requires a mitigation of the amount of the garnishment allowable by law. 31

C.F.R. §§ 285.11(k) (3), if Petitioner presents evidence in support of her claim of financial hardship.

Petitioner was ordered twice to provide documentary evidence that proved, specifically, her claim of financial hardship. (Notice of Docketing, at p. 2; Order, dated December 29, 2010.) Petitioner was specifically ordered “to provide documentary evidence that was not limited to a mere list of expenses, but instead must include proof of payment, where applicable” and that such evidence shall include:

- cancelled checks, receipts, or bills showing a record of payment, or other documentary proof of payments;
- copies of Petitioner’s pay statements for the past 12 months;
- copies of bills such as utilities, mortgage payments, automobile expenses, and other documents showing payment of household expenses;
- proof of child support payments, if applicable, for each of the last six months;
- copies of payments made on credit card debt or other consumer loans for essential household expenses; and
- proof of number and relationship of dependents living in Petitioner’s household and proof of total income for all wage-earners in the household.

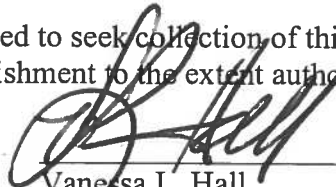
(Notice of Docketing, at p. 2; Order, at p. 1.)

In response to the Orders issued, Petitioner only filed a copy of an Income Verification from the Massachusetts Department of Transitional Assistance dated January 10, 2011, and a copy of Petitioner’s Gas Bill, dated November 10, 2010. (*Id.*, Attachs.) The evidence provided by Petitioner did not fully comply with the Orders issued by this Office, and also was insufficient in meeting Petitioner’s burden of proof by a preponderance of the evidence. Accordingly, I find that Petitioner has failed to comply with the Orders issued by this Office and her financial hardship claim must fail for want of proof. (*See Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of 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

April 26, 2011