



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

In the Matter of:

Dorothy D. Cook Haith,
Petitioner

HUDOA No. 10-H-NY-AWG21
Claim No. 5458910

Dorothy D. Cook Haith
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Raeford, NC 28376

Pro se

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For the Secretary

DECISION AND ORDER

On December 10, 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 17, 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 September 19, 1988, Petitioner executed and delivered to Quality Craft Homes a Retail Installment Contract ("Note") in the amount of \$18,376.00 for the purchase of a manufactured home, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Secretary's Statement ("Sec'y Stat."), filed February 3, 2010, ¶ 2, Ex. A.) Quality Craft Homes immediately assigned the Note to Logan-Laws Financial Corporation. (*Id.* at ¶ 3, Ex. A.) By letter dated August 4, 1993, the Government National Mortgage Association ("GNMA") declared Logan-Laws Financial Corporation in default of its obligations under its Guaranty Agreement, and terminated its right to continue as an issuer of GNMA mortgage backed securities ("MBS"). (*Id.* at ¶ 4, Ex. B, Declaration of Paul St. Laurent, III, Director, Mortgage-Backed Securities Monitoring Division of the GNMA within HUD ("St. Laurent Decl."), dated February 2, 2010, ¶ 7.) Accordingly, while the assignment from Logan-Laws Financial Corporation to GNMA cannot be located, the Secretary's ownership of the Note is derived from the Guaranty Agreement executed by issuers of GNMA MBS. (*Id.* at ¶ 5, Ex. B, ¶¶ 5-7.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (*Id.* at ¶ 7.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (*Id.* at ¶ 8, Ex. B, ¶ 4.) The Secretary has filed a Statement with documentary evidence in support of her position that Petitioner is indebted to the Department in the following amounts:

- (a) \$8,297.30 as the unpaid principal balance;
- (b) \$460.85 as the unpaid interest on the principal balance at 13.75% per annum through December 26, 2001; and
- (c) interest on the principal balance from December 27, 2001 until paid.

(*Id.*, Ex. B, ¶ 4.)

On November 5, 2009, the Department of the Treasury, Financial Management Service, acting on behalf of HUD sent a notice to the Petitioner demanding either of the following: payment in full of the debt she owes HUD; a repayment plan acceptable to HUD by December 5, 2009, or a request for a hearing by November 26, 2009. (Sec'y Stat. ¶ 9.) On December 10, 2009, the Petitioner responded to the Department of the Treasury, Financial Management Service's notice by alleging that she does not owe the subject debt and requesting a hearing.

On January 14, 2010, GNMA sent Petitioner a letter proposing a repayment plan. (*Id.* at ¶ 11, Ex. B, ¶ 9, Ex. C.) To date, Petitioner has not entered into a written repayment agreement; therefore, the Secretary proposes a wage garnishment amount of 15% of Petitioner's disposable pay. (*Id.* at ¶ 11, Ex. B, ¶ 9.)

Discussion

Petitioner claims the alleged debt that is the subject of this proceeding does not exist and that she does not owe the debt: "Property was sold to Gwendolyn Luckie Vonder who is now deceased." (Petitioner's Request for Hearing, "Pet'r Hr'g Req.," filed December 10, 2010). Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that no debt exists or that the amount of the debt is incorrect.

Petitioner, however, has failed to present credible evidence that the alleged debt is not past-due and legally enforceable in the amount claimed by the Secretary, despite being ordered three times to do so. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated December 17, 2009; Order, dated February 5, 2010; Order to Show Cause, dated March 2, 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 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 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

June 18, 2010