



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

In the Matter of:

Helen T. Price,

Petitioner.

HUDOA No. 10-H-NY-AWG36
Claim No. 52-0883319BZ

Helen T. Price
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Pro se

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For the Secretary

DECISION AND ORDER

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 January 20, 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 January 20, 2010.)

Background

On March 27, 1992, the Petitioner executed and delivered to NC Mobile Home dba Home Town USA, a Retail Installment Contract ("Note") in the amount of \$17,874.25 which was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat., ¶ 2; Sec'y Stat. Ex. A, Note.) Contemporaneously, on March 27, 1992, the Note was assigned by NC Mobile Home dba Home Town USA to Logan-Laws Financial Corporation ("Logan-Laws"). (Sec'y Stat. ¶ 3; Note, p. 2.) After a default by Logan-Laws, the corporation assigned rights and interest in Petitioner's loan to the Government National Mortgage Association ("GNMA"). (Sec'y Stat. ¶ 4; Ex. B, Decl. Paul St. Laurent, III, ¶ 4.) GNMA is a division of HUD and the rightful holder of the Note. (Sec'y Stat. ¶ 5.)

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD. The Secretary alleges that Petitioner is currently in default and is indebted to HUD in the following amounts:

- (a) \$12,675.07 as the unpaid principal balance;
- (b) \$3,619,016 as the unpaid interest on the principal balance at 13% per annum through August 28, 2002; and
- (c) interest on said principal balance from August 29, 2002 until paid.

(Sec'y Stat. ¶ 6; St. Laurent Decl. ¶ 6).

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated December 18, 2009 was sent to Petitioner. (Sec'y Stat. ¶ 7.) 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 has not done so. (Sec'y Stat. ¶ 8.) The Secretary proposes a repayment schedule of 10% of Petitioner's disposable pay. (Sec'y Stat. ¶ 9.)

Discussion

Petitioner does not dispute the existence of the debt. Rather, Petitioner disputes the amount of the debt and argues that, "[t]he property was destroyed by flood and I had insurance included with my payment. I am not financially able to pay." (Pet'r's Hr'g Req.) However, Petitioner submits no evidence to prove that insurance payments were used to pay off her alleged debt to HUD. This Office has found that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable." *Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing, *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Therefore without proof of payments made to decrease the amount of the debt, Petitioner has failed to prove that the amount of the debt is incorrect.

Petitioner also claims that an administrative wage garnishment in the amount proposed by the Secretary would create a financial hardship. Specifically, Petitioner states that, "this is a hardship on me to maintain a living and meet my needs. Is there anyway you could relieve me of this debt?" (Pet'r's Doc. Evid., April 23, 2010.) This Office has held that financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *In re Shone Russell*, HUDOA No. 09-H-NY-KK15 (June 25, 2009) (citing *In re 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). Petitioner may submit evidence showing the repayment of this loan as proposed by the Secretary would create a financial hardship. See 31 C.F.R. § 285.11(f)(8)(ii).

In support of her financial hardship claim, Petitioner submitted pay statements from her employer for June 2009 through July 2010, and various bills and receipts. (Pet'r's Doc. Evid., July 27, 2010.) Petitioner's disposable pay for administrative wage garnishment can be calculated by deducting health insurance premiums and any amounts required by law to be withheld from her gross pay—including social security taxes and withholding taxes, and excluding amounts withheld pursuant to a court order. 31 C.F.R. § 285.11(c). Petitioner's pay statements reflect a bi-weekly, gross pay rate of \$480.00 and allowable deductions totaling \$63.41 (FICA, \$36.72; federal withholding, \$10.69; and NC state tax, \$16.00). (Pet'r's Doc. Evid. July 27, 2010.) After deducting Petitioner's allowable deductions from her gross pay, Petitioner's disposable income totals \$416.59 bi-weekly, or \$833.18, monthly.

Petitioner submits bills and/or receipts for her mortgage, \$794.96; life insurance, \$53.00; electric bill, \$388.44; phone, \$155.50; auto insurance, \$52.89; computer, \$32.00; satellite, \$83.52; Mastercard, \$35.00; and food, \$159.21. Of the evidence submitted by Petitioner, only her satellite and computer expenses will not be credited towards her essential household expenses. See, *In re Charles R. Chumley*, HUDOA No. 09-M-CH-AWG09 (April 6, 2009). Similarly, Petitioner's Mastercard payment will not be considered because Petitioner has not shown that the Mastercard was used to cover essential household expenses. See, *In re Cynthia Ballard Rachall*, HUDOA No. 09-H-CH-AWG103 (August 6, 2009). Accordingly, I find Petitioner's monthly household expenses total \$1,604.00.

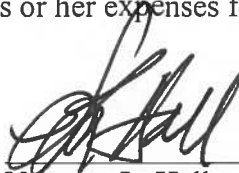
This Office has the authority to order garnishment at a lesser rate based upon the record before it. 31 C.F.R. §285.11(k)(3). Upon reviewing the record, this Office finds Petitioner's monthly household expenses of \$1,604.00 exceed her monthly disposable income of \$833.18 by \$770.82. Petitioner has, therefore, submitted sufficient documentary evidence to substantiate her claim of financial hardship in the amount proposed by the Secretary. Accordingly, this Office finds that an administrative wage garnishment of Petitioner's disposable income at any rate would constitute a financial hardship for Petitioner.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment shall remain indefinitely. Therefore it is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment because of Petitioner's financial circumstances at this time.

The Secretary shall not be prejudiced from seeking an administrative wage garnishment if, in the future, Petitioner's income increases or her expenses for necessities are reduced.



Vanessa L. Hall
Administrative Judge

August 20, 2010