



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

In the Matter of:

Lisa Morris,

Petitioner

HUDOA No. 10-M-CH-AWG102
Claim No. 77-11546940B

Lisa Morris
5853 S. Kings Road
Los Angeles, CA 90056

Pro se

Sara Mooney, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, Illinois 60604

For the Secretary

DECISION AND ORDER

On July 8, 2010, this Office received a hearing request from Petitioner 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 in this case 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, that the amount of the debt is incorrect, 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 addition, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, or would cause an undue financial hardship to Petitioner. *Id.* Pursuant to 31 C.F.R. § 285.11(f)(4), on July 8, 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 July 8, 2010.)

Background

On or about March 23, 1996, Lisa Morris ("Petitioner") and Kelvin Morris delivered to Avalon Lending Group, Inc. a Note and assignments ("Note") in the amount of \$15,000.00. (Secretary's Statement ("Sec'y Stat."), filed July 30, 2010, ¶ 2, Ex. A at 1.)

This Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. §1703. (Sec'y Stat. ¶ 4, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center, HUD ("Dillon Decl."), dated March 10, 2010, ¶¶ 2-3.) Petitioner failed to make payments as agreed in the Note, and the Note was subsequently assigned to HUD. (Sec'y Stat. ¶ 4.) HUD has attempted to collect the amount due under the Note, but Petitioner remains delinquent. (Sec'y Stat. ¶ 4, Dillon Decl. ¶ 4.) Petitioner is allegedly indebted to the Secretary in the following amounts:

- a. \$14,801.06 as the unpaid principal balance as of June 30, 2010;
- b. \$9,903.74 as the unpaid interest on the principal balance at 5.0% per annum through June 30, 2010; and
- c. Interest on said principal balance from July 1, 2010, at 5.0% per annum until paid.

(Sec'y Stat. ¶ 8, Dillon Decl. ¶ 4.)

The Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated May 11, 2010, was sent to Petitioner at 5853 S. Kings Rd., Los Angeles, CA 90056. (Sec'y Stat. ¶ 5, Dillon Decl. ¶5.) In accordance with 31 C.F.R. 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec'y Stat. ¶ 6, Dillon Decl. ¶6.) Petitioner, however, did not enter into a written repayment agreement at that time. Id. The Secretary's proposed repayment schedule is \$390.05 bi-weekly or 15% of Petitioner's disposable pay. (Sec'y Stat. ¶ 14, Dillon Decl. ¶ 9.)

Discussion

In Petitioner's Hearing Request, Petitioner disputes owing the full amount of the debt. (Petitioner's Request for hearing ("Pet'r Hr'g Req."), filed July 8, 2010.) Petitioner is permitted to present evidence that no debt exists or that the amount is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). On August 10, 2010, Petitioner filed her statement that Petitioner's debt is unenforceable against Petitioner. (Petitioner's Statement that the Debt is Unenforceable Against Petitioner and that Enforcement of the Debt Should be Stayed Pending a Potential Settlement of this Action ("Pet'r Stat."), filed August 10, 2010.) Petitioner states that: 1) "HUD has not shown the legal basis for enforcement of the alleged debt;" 2) "Petitioner is not aware of any judgment that HUD obtained against [Petitioner];" 3) "Petitioner has been denied due process of law because [there was not] an opportunity to contest the validity of the alleged debt and reach an...

amicable settlement should the debt be found to be valid;" and that 4) "the debt is a community obligation between Kevin Morris and Petitioner."

First, Petitioner states that HUD has not shown a legal basis for the enforcement of the alleged debt. In the Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), issued on July 8, 2010, this Office ordered Petitioner to "present evidence that the alleged debt [to HUD] is either unenforceable or not past due." (Notice of Docketing, Order, and Stay of Referral, dated July 8, 2010.) The Secretary was also ordered to file documentary evidence proving that Petitioner's debt was enforceable and past due. (*Id.*) The Secretary filed a brief and documentary evidence on July 30, 2010. On August 11, 2010, this Office again ordered Petitioner to file documentary evidence to support his argument that the debt does not exist. (Order, dated August 11, 2010.) The Order required Petitioner to file her documentary evidence on or before September 3, 2010, and stated that, "[f]ailure to comply with this Order shall result in a decision based on the documents in the record of this proceeding." (emphasis in original) (*Id.* at 2.) Petitioner failed to comply with this Order.

Petitioner has thus failed to submit any evidence that the alleged debt is unenforceable or not past due. 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." Troy Williams, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing, Bonnie Walker, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Since Petitioner does not offer any evidence that could prove that the debt is unenforceable, I find that Petitioner's argument fails for want of proof.

Second, Petitioner states that she was not aware of any judgment against her. Petitioner does state that "during [her] marriage the couple purchased the property....and obtained a ...improvement loan, which was subsequently transferred to HUD..." The Note in section 8 states:

I waive my rights to require the Note Holder to do certain things. Those things are: (A) to demand payment of amounts due (known as "presentment") (B) to give notice that amounts due have not been paid (known as "notice of dishonor") (C) to obtain an official certification of nonpayment (known as "protest").

No judgment is necessary to show that Petitioner is justly indebted to HUD. Petitioner has not provided any evidence why there would need to be a judgment. Therefore I find that this argument fails for lack of evidence.

Third, Petitioner states that she was denied due process of law for lack of opportunity to contest validity of debt and reach a settlement. On August 11, 2010, this Office ordered the Secretary to file "a supplemental statement certifying that he has afforded Petitioner another opportunity to enter into a repayment schedule in accordance with 31 C.F.R. §285.11(e)(2)(ii). (Order, dated August 11, 2010.) On August 25, 2010, the Secretary filed a supplemental statement stating that "on August 23, 2010, HUD provided the Petitioner with another opportunity to enter into a repayment schedule" and that "Petitioner failed to enter into a repayment schedule and stated she will prove the debt is not enforceable." (Secretary's Supplemental Statement filed August 25, 2010, ¶ 2, Ex. A at 3, Declaration of Kathleen M.

Porter, Acting Director, Asset Recovery Division, Financial Operations Center, dated August 24, 2010, ¶3.) I find that the Secretary has met his obligations pursuant to 31 C.F.R. 285.11(e)(2)(ii) by giving Petitioner an opportunity to enter into a repayment plan.

Fourth, and finally, Petitioner asserts that the debt is a “community obligation” between her and her ex-husband Kevin Morris. Although Petitioner and her ex-husband both signed the Note, 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 at 4. To prove that she is not liable for the debt, Petitioner must file 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. Karpanaj, HUDBCA No. 87-2518-H51 (January 27, 1988). Petitioner has submitted no evidence to prove that she has been released of her obligation to HUD. Accordingly, I find that Petitioner remains legally obligated for her debt.

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.



H. Alexander Manuel
Administrative Judge

October 6, 2010