



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

In the Matter of:

Shannon Skorohodoff,
a/k/a Shannon Rivas

Petitioner.

HUDOA No: 10-M-CH-AWG122
HUD Claim No: 721005902

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Pro se

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DECISION AND ORDER

On September 10, 2010, Petitioner filed a hearing request concerning a proposed administrative wage garnishment action by the U.S. Department of Housing and Urban Development ("HUD") to collect on alleged debt against Petitioner. 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 alleged debt in contested administrative wage garnishment proceedings are enforceable against the 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 and by 24 C.F.R. Part 26, Subpart A. 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 September 14, 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 (“Notice of Docketing”), dated September 14, 2010.)

Background

On or about January 17, 2001, Shannon Skorohodoff, a/k/a Shannon Rivas (“Petitioner”) executed and delivered to the Secretary a Partial Claims Promissory (“Note”) in favor of the Secretary of Housing and Urban Development. (Secretary’s Statement (“Sec’y Stat.”), filed Sept 30, 2010, ¶ 2; Ex. B, Note.) The amount to be repaid under the Note is \$16,851.34. (Sec’y Stat., ¶ 3; Ex. B, Note.) The Note cited specific events that made the debt become due and payable; one of these events being that the Petitioner paid in full all amounts due under the Note and related mortgage insured by the Secretary. (Sec’y Stat., ¶ 4; Ex. C, Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, HUD Financial Operations Center (“Porter Decl.”), dated September 28, 2010, ¶ 4.) On or about March 4, 2004, the FHA Insurance on the first mortgage was terminated when the lender indicated the mortgage was paid in full. (Sec’y Stat., ¶ 4; Ex. C, Porter Decl., ¶ 4.)

HUD has attempted to collect on the alleged claim from Petitioner, but Petitioner remains delinquent. The Petitioner is allegedly indebted to HUD in the following amounts:

- (a) \$15,762.53 as the unpaid principal balance as of August 30, 2010;
- (b) \$0.00 as the unpaid interest on the principal balance at 3% per annum through August 30, 2010; and
- (c) interest on said principal balance from September 1, 2010, at 3% per annum until paid.

(Sec’y Stat., ¶ 10; Ex. C, Porter Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment dated January 26, 2010 was sent to Petitioner. (Ex. C, Porter Decl., ¶ 6.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement, but did not elect to do so. (Sec’y Stat., ¶ 7; Ex. C, Porter Decl., ¶¶ 7-9.) Petitioner provided a copy of her pay statement for the two week period ending on September 15, 2010. (Ex. C, Porter Decl., ¶ 10; Ex. A, Pay Statement.) This pay statement indicates that the Petitioner’s bi-weekly net disposable pay for the purpose of administrative wage garnishment totals \$1,375.42. (Ex. C, Porter Decl., ¶ 10.) Based on the pay statement, the Secretary proposes an administrative wage garnishment in the amount of \$206.32 per bi-weekly pay period or 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 8; Ex. C, Porter Decl. C ¶ 7.)

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 a financial hardship to Petitioner, or that collection of the debt may not be pursued by operation of law. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner disputes the existence of the debt in this case and argues that repayment of this debt in the amount proposed by the Secretary would create a financial hardship. (Pet'r's Ltr., dated November 2, 2010.)

First, Petitioner argues: "When my home was refinanced from Wells Fargo to a non FHA loan, I was told that all the necessary funds were paid to the lien holder and to the U.S. Department of Housing and Urban Development." (Pet'r's Ltr., dated November 2, 2010.) In support of her argument Petitioner submitted copies of her HUD-1A Settlement Statement, dated Feb 24, 2004; and her Wells Fargo Home Mortgage Confirmation of Loan Payoff, dated March 5, 2004. (*Id.*) This Office has held that in order to prove that Petitioner has satisfied the debt to HUD, "there must either be a release in writing from HUD specifically discharging Petitioner's obligation, or valuable consideration accepted by lender from Petitioner, which would indicate an intent to release." *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (Feb 28, 1986). In this case, the HUD-1A settlement statement does not reflect any funds being dispersed to HUD. The payoff to Wells Fargo is also insufficient because, as evidenced in the Note, the lender was HUD and not Wells Fargo. Accordingly, this Office finds that Petitioner's evidence fails to prove that HUD released Petitioner from her obligation to repay the alleged debt in this case.

Second, Petitioner argues that her ex-husband is liable for the debt and not her. Specifically, Petitioner states that "a few months after the refinance, I was contacted by a company named First Madison regarding a debt owed by my ex-husband from HUD... I was not contacted by them again nor anyone else regarding this, or any other debt owed to HUD." (Pet'r's Ltr., dated November 2, 2010.) In support of her argument, Petitioner submitted a copy of a letter from First Madison Services, Inc., dated May 10, 2004, addressed to her ex-husband demanding repayment of the alleged debt in this case. (*Id.*) The Secretary submitted a copy of the Note which shows that Petitioner signed the Note and agreed to the terms. (Sec'y Stat., ¶ 2. Ex. B, Note.) This Office has held that as a cosigner on the Note, Petitioner is jointly and severally liable for the obligation. "Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together." *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). This means that the Secretary may proceed against any cosigner for the full amount of the debt. Accordingly, this Office finds that Petitioner's evidence only shows that her ex-husband may also be liable for the debt in this case and is insufficient to show that she, herself, is not liable.

Third, Petitioner argues: "If this debt is in fact owed by me, I submit that it is neither past due nor delinquent... This debt was over eight years old before the collection agency obtained the wage assignment. Never in all that time did HUD contact me regarding this account; this debt is unenforceable." (Pet'r's Ltr., dated November 2, 2010.) However, Petitioner does not submit any evidence or applicable case law to support her assertion. This Office has previously

held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable.” *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). In addition, there is no statute of limitations for administrative wage garnishment or administrative offset cases. See *Edward Tsagris* HUDOA No. 08-H-CH-AWG09 (May 7, 2008) (finding that 28 U.S.C. §2415(a) authorizes administrative wage garnishments without applying any time restriction for the commencement of a garnishment action because Congress did not authorize any such limitation in these garnishment proceedings as a matter of law). Therefore, Petitioner’s assertion that the alleged debt in this case is not past due or enforceable must fail for want of proof.

Lastly, Petitioner requests that this Office “consider [her] financial circumstances.” (Pet’r’s Ltr., dated November 2, 2010.) While financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it, the existence of financial hardship requires a mitigation of the amount of the garnishment allowable by law. See *David Agerton* HUDOA No. 09-H-NY-AWG143, at p.3 (November 20, 2009). The Notice of Docketing stated that “[t]o prove financial hardship, Petitioner’s documentary evidence should not be limited to a mere list of expenses, but instead must include proof of payment of household expenses.” (emphasis in original) (Notice of Docketing, Order and Stay of Referral, dated September 14, 2010.)

In support of her financial hardship claim, Petitioner submitted financial documentation of essential monthly expenses showing: HFC Mortgage, \$2172; Home Insurance, \$56.00; phone, \$75.00; electric, \$213.92; water bill, \$50.00; and automobile payment, \$597.00. (Pet’r’s Ltr, dated November 2, 2010.) However, the HFC Mortgage bill reflects that Petitioner actually only pays \$1006.17 of her bill. (*Id.*) Accordingly, Petitioner will be credited \$1006.17 for the HFC mortgage.

Petitioner also alleges that “the wage assignment of \$422.00 a month from my check has forced us to use credit cards and lines of credit for basic expenses.” (*Id.*) However, Petitioner’s assertion concerning monthly credit card payments will not be credited towards Petitioner’s monthly expenses because Petitioner has not shown, with specificity, that the credit cards have been used for essential household expenses. See *Cynthia Ballard Rachall* HUDOA No. 09-H-CH-AWG103 (August 6, 2009) (finding that Petitioner’s submission of credit card bills without indicating which charges were for essential household expenses would be excluded from her essential household expenses calculation). Petitioner’s assertions concerning monthly Advantis Credit Union Mortgage payment of \$880.00 will also not be credited towards Petitioner’s monthly expenses because the bill that Petitioner provided is not addressed to her and she has not provided proof that she is responsible for payment of this bill. See *Jeanne Palmer*, HUDOA No. 09-M-NY-AWG113 at p.4 (August 6, 2009). Therefore, Petitioner’s total essential monthly expenditures are adjusted to \$1998.09.

Petitioner also states in her letter “My husband is unemployed and has been for almost two years-his insurance is ending soon.” (Pet’r’s Ltr., dated November 2, 2010.) In support of her argument, Petitioner submitted a document which reflects payments by the State of Oregon to her (husband) Alex Rivas from 4/24/10 thru 10/16/10 of \$425.00 weekly. (*Id.*) However, Petitioner’s evidence only shows the weekly amount of benefits in income her husband receives

and fails to show that the benefits will no longer be received. Therefore, Petitioner's argument fails for want of proof.

Petitioner submitted bi-weekly pay statements covering a period from October 22, 2009 through October 21, 2010. (Pet'r's Ltr, dated November 2, 2010.) These pay statements reflect an average monthly disposable income of \$2797.34. (*Id.*) Additionally, Petitioner's evidence shows that her husband receives \$1700.00 in monthly insurance benefits. (*Id.*) Accordingly, \$1700.00 of Petitioner's household expenses will be attributed to her husband.

After deducting Petitioner's share of monthly bills and expenses of \$298.09, Petitioner is left with a remaining balance of approximately \$2499.25 per month. The Secretary has proposed a repayment schedule of fifteen (15) percent, which amounts to \$412.64 of Petitioner's disposable monthly pay and leaves Petitioner with a positive balance of \$2086.61 to meet any additional expenses Petitioner may have. Upon consideration, this Office finds the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary and garnishment of fifteen (15) percent of Petitioner's disposable income would not constitute a financial hardship.

ORDER

For the reasons set forth above, this Office finds 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 pay, or \$206.32 per bi-weekly pay period, until fully paid.



H. Alexander Manuel
Administrative Judge

March 9, 2011