



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

In the Matter of:

Josephine Yvonne McFadzean,

Petitioner.

HUDOA No. 10-M-CH-AWG29
Claim No. 721005450

Josephine Yvonne McFadzean
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Pro se

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For the Secretary

DECISION AND ORDER

On January 11, 2010, 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 12, 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 12, 2010.)

Background

On December 31, 1999 Petitioner executed and delivered a Partial Claims Promissory Note ("the Note") in the amount of \$17,705.24 in favor of the Secretary to secure a partial claim paid by the Secretary. (Sec'y Stat. ¶¶ 1-2; Sec'y Stat. Ex. 1, Note.) In return, HUD advanced funds to the FHA-insured lender to pay the arrearages on Petitioner's mortgage and to avoid the foreclosure of Petitioner's primary residence. (Sec'y Stat. ¶ 1.) Pursuant to the terms of the Note, payment becomes due and payable when, "...Borrower has paid in full all amounts due under the primary [n]ote and related mortgage, deed of trust or similar [s]ecurity instruments insured by the Secretary..." (Sec'y Stat. ¶ 2; Sec'y Stat. Ex. 1, Note.) The Note also expressly states that payment shall be made to the following address: Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410. (Sec'y Stat. ¶ 3; Sec'y Stat. Ex. 1, Note, ¶ 3(B).) On or about May 1, 2002, the FHA-mortgage insurance on the first mortgage was terminated as the lender indicated the mortgage was paid in full making the Note due in full. (Sec'y Stat. ¶ 4.)

The Secretary has made efforts to collect the alleged debt from Petitioner but has been unsuccessful. (Sec'y Stat. ¶ 5.) The Secretary alleges that Petitioner remains delinquent and is indebted to HUD in the following amounts:

- (a) \$17,705.24 as the unpaid principal balance as of January 4, 2010;
- (b) \$422.79 as the unpaid interest on the principal balance at 5% per annum through January 4, 2010; and
- (c) interest on said principal balance from January 5, 2010, at 5% per annum until paid.

(Sec'y Stat. ¶ 6; Sec'y Stat. Ex. 2, Dillon Decl. ¶ 5.)

On October 15, 2009, a Notice of Intent to collect this debt by administrative wage garnishment was mailed to Petitioner. (Sec'y Stat. ¶ 8.) Petitioner was afforded the opportunity to enter into a repayment agreement, but failed to enter into such an agreement. (Sec'y Stat. ¶ 9.) As a result, a wage garnishment order was issued to Petitioner's employer on November 15, 2009. (Sec'y Stat. ¶ 10.) Based on the issuance of an administrative wage garnishment order, Petitioner's pay has been garnished once on January 4, 2010 in the amount of \$1,253.16. (Sec'y Stat. ¶ 11.) Several unsuccessful attempts were made by the Secretary to obtain Petitioner's pay stub. (Sec'y Stat. ¶ 12) The Secretary proposes a repayment schedule of \$1,253.16 or 15% of Petitioner's disposable pay. (Sec'y Stat. ¶ 13.)

Discussion

Petitioner disputes the existence of this debt and argues, "this loan should have been taken care of when I refinanced years ago." (Pet'r's Letter, Mar. 1, 2010.) As stated above, the

Note that is the subject of these proceedings originated from a Partial Claims Promissory Note in favor of HUD. This Office has held that Petitioner must submit evidence of either a written release from HUD showing that Petitioner is no longer liable for the debt, or evidence of valid or valuable consideration paid to HUD in order to prove that the debt has been satisfied. *In re Cynthia Ballard Rachall*, HUDOA No. 09-H-AWG103 at 3 (August 6, 2009) (citing *In re William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000)).

Petitioner has not submitted any evidence to prove that the debt in this case is not past due or legally enforceable despite being ordered by this Office to do so on four separate occasions. (See, Notice of Docketing; Order, Feb. 19, 2010; Order, Mar. 5, 2010; Order, June 30, 2010.) 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.” *In re Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *In re Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Accordingly, I find that Petitioner’s argument that the debt in this case has been paid fails for want of proof.

Petitioner also argues that an administrative wage garnishment in the amount proposed by the Secretary would create a financial hardship. (Pet’r’s Letter, Mar. 1, 2010.) Although 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 *In re David Agerton*, HUDOA No. 09-H-NY-AWG143 at 3 (November 20, 2009). In the Notice of Docketing issued to Petitioner, this Office explained 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 at 2.) The Notice of Docketing also required Petitioner to file copies of Petitioner’s pay statements for the past 12 months. (*Id.*) Petitioner did not file any such documentary evidence in response to the Notice of Docketing.

On February 19, 2010, this Office again ordered Petitioner to file documentary evidence to prove her financial hardship claim. (Order, Feb. 19, 2010.) This Order also instructed Petitioner to file,

“proof consisting of receipts, checks, or other proof of payment of necessary household expenses...Petitioner’s documentary evidence shall include copies of Petitioner’s pay statements, and where applicable,...mortgage payments, utility bills, food, clothing, transportation, and other essential household expenses, covering the period of the past six months...If Petitioner claims payment for credit card debt or other consumer loans, Petitioner must file proof that the debt was incurred in order to meet essential household needs.” (emphasis in original)

(*Id.*) In response to the Order, Petitioner submitted a bill from Bank of America and a mortgage bill from Litton Loan Servicing, LP and stated, “I can forward other bills if you need them.” (Pet’r’s Letter, Mar. 1, 2010.) Petitioner also explained that, “[t]he Bank of America loan was on [sic] that I got to re-my [sic] kitchen. I had mold problem to leak. [sic]” (*Id.*) Other than

these two bills, Petitioner did not file any pay statements to support her financial hardship claim nor did she submit proof of payment for these bills as required by the Order.

On March 5, 2010, this Office again ordered Petitioner to file documentary evidence to prove her financial hardship claim. The language in the March 5, 2010 Order restated the requirements for financial hardship claims listed in the February 19, 2010 Order and the Notice of Docketing. (Order, Mar. 5, 2010.) Petitioner did not file any documents in response to this Order. On June 30, 2010, this Office again ordered Petitioner to file documentary evidence to prove her claims. (Order, Jun. 30, 2010.) The Order also 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.*) Petitioner did not respond to this Order. Petitioner has not filed adequate proof to support her financial hardship claim and has, therefore, failed to comply with the orders of this Office. Accordingly, I find that Petitioner’s financial hardship claim fails for want of proof.

Lastly, Petitioner asks this Office to “[p]lease make it more affordable for me so that I can get caught up with my other responsibilities. I would be willing to pay \$500.00 a month.” (Pet’r’s Letter, Mar. 1, 2010.) This Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the HUD. Petitioner may wish to discuss this matter with either Counsel for the Secretary or Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

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

August 11, 2010