



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

In the Matter of:

**DENISE JOHNSON CARLINO,**  
Petitioner

HUDOA No. 10-M-CH-AWG64  
Claim No. 721005853

*Pro Se*

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**DECISION AND ORDER**

On March 16, 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 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 (f)(10), on March 19, 2010, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision.

### Background

On June 23, 2003, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$2,641.28 to secure a partial claim on her behalf by the Secretary to pay the arrearages on her primary FHA-insured mortgage and avoid the foreclosure of her home. (Secretary's Statement ("Sec'y Stat."), filed March 30, 2010, ¶ 1, Ex. 1.) The Note cites specific events that would cause the debt to become due and payable. (*Id.* at ¶ 2, Ex. 1.) One of these triggering events was when the Petitioner paid all amounts due under the primary note insured by the Secretary. (*Id.*) On or about June 2, 2008, the FHA insurance on the primary note was terminated when the lender informed HUD that the mortgage had been paid in full. (*Id.* at ¶ 3; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated March 29, 2010, ¶ 4.) Thus, the Note became due and payable in full at that time. (Sec'y Stat., ¶ 4.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 5.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

- (a) \$2,641.28 as the unpaid principal balance as of February 28, 2010;
- (b) \$79.20 as the unpaid interest on the principal balance at 3% per annum through February 28, 2010; and
- (c) interest on said principal balance from March 1, 2010 at 3% per annum until paid.

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

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated February 4, 2010 was sent to Petitioner. (Sec'y Stat., ¶ 7; Dillon 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 with HUD under mutually agreeable terms. (Dillon Decl., ¶ 7.) As of March 29, 2010, Petitioner has not entered into a written repayment agreement in response to the notice. (*Id.*)

As of March 30, 2010, Petitioner has not complied with the Secretary's request to provide proof of income. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 8.) Accordingly, the Secretary submits that a reasonable amount to garnish is \$80.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 8.)

## Discussion

Petitioner argues that the alleged debt to HUD does not exist. Petitioner writes, "My previous name was 'Johnson.' I never lived in or had any bill from HUD." (Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed March 16, 2010, 2010.)

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, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause financial hardship. On March 19, 2010, this Court ordered Petitioner to file documentary evidence to prove that all or part of the alleged debt to HUD in this case is either unenforceable or not past due. (Notice of Docketing, Order, and Stay of Referral, dated March 19, 2010.) Petitioner was also ordered to file documentary evidence proving that repayment of the debt would cause her financial hardship. (*Id.*) Petitioner failed to comply with this Order.

Additionally, this Court ordered the Secretary to file the proposed repayment schedule required under 31 C.F.R. § 285.11(3)(2)(ii), as well as documentary evidence proving that Petitioner's alleged debt to HUD is enforceable and past due. (*Id.*) On March 30, 2010, the Secretary filed the Secretary's Statement, setting forth the documentary evidence in support of the claim against Petitioner for the debt owed to HUD. (Sec'y Stat.)

On June 30, 2010, a second Order was issued ordering Petitioner to file the same information sought in the Notice of Docketing, Order, and Stay of Referral. (Order, dated June 30, 2010.) This Order stated that "[f]ailure to comply with this Order may result in a decision based on the documents in the record of this proceeding." (*Id.*) Petitioner failed to comply with this Order as well.

To date, Petitioner has failed to comply with all of the Orders issued by this Office to provide evidence that would prove that the subject debt is unenforceable or not past due, or provide evidence to support any claim that repayment of the debt would create a financial hardship for her. Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing office, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party* (emphasis added).

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 unenforceable." *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996).) Therefore, in the absence of documentary evidence to support Petitioner's assertion that she does not owe the alleged debt, this Office finds that Petitioner's claim fails for lack of proof. Furthermore, Petitioner's non-compliance with the Orders issued by this Office also supports finding against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations. (*Id.*)

**ORDER**

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.



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H. Alexander Manuel  
Administrative Judge

October 21, 2010