



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

In the Matter of:

Anne Board,
Petitioner

HUDOA No. 10-M-CH-AWG95
Claim No. 721004770

Anne Board
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Katy, TX 77450-5513

Pro se

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For the Secretary

DECISION AND ORDER

On June 4, 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 is 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 June 15, 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 June 15, 2010.)

Background

On June 18, 2002, Petitioner executed and delivered to the Secretary a Partial Claim Promissory Note (“Note”) in the amount of \$5,743.90, in exchange for foreclosure relief being granted by the Secretary. (Secretary’s Statement (“Sec’y Stat.”), dated July 16, 2010, ¶¶ 2-3, Ex. A; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated June 25, 2010, ¶ 4.) The Note cites specific events that cause the debt to become due and payable; one such event is when the borrower has paid in full all amounts due under the primary note. (Sec’y Stat., ¶ 4, Ex. A; Dillon Decl., ¶ 4.) On or about December 15, 2003, the FHA insurance on the primary note was terminated when the lender informed HUD that the mortgage had been paid in full. (Sec’y Stat., ¶ 5; Dillon Decl., ¶ 4.) Thus, the Note became due and payable in full at that time. (Sec’y Stat., ¶ 5; Dillon Decl., ¶ 4.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec’y Stat., ¶ 6, 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) \$5,664.35 as the unpaid principal balance as of May 30, 2010,
- (b) \$18.88 as the unpaid interest on the principal balance at 4% per annum through May 30, 2010, and
- (c) interest on said principal balance from June 1, 2010 at 4% per annum until paid.

(Sec’y Stat., ¶ 7, Dillon Decl., ¶ 5.)

A Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings dated May 10, 2010 was sent to Petitioner. (Sec’y Stat., ¶ 8, 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. (Sec’y Stat., ¶ 8; Dillon Decl., ¶ 7.) The May 10, 2010 Notice sent to Petitioner by Linebarger Goggan Blair & Sampson, LLP satisfies this requirement. (Sec’y Stat., ¶ 8; Dillon Decl., ¶ 7.) The Notice indicates, “You should call us at the telephone number listed below to discuss acceptable repayment plans,” and “If you pay your debt in full or enter into a repayment plan acceptable to the Federal Agency before June 10, 2010[,] a garnishment order will not be issued to your employer.” (Sec’y Stat., ¶ 8; Dillon Decl., ¶ 7.) As of June 25, 2010, Petitioner had not entered into a written repayment agreement based on the May 10, 2010 Notice. (Sec’y Stat., ¶ 8; Dillon Decl., ¶ 7.)

The Secretary has attempted to obtain Petitioner’s current pay statement, but as of June 25, 2010, Petitioner has not provided HUD with a copy of her current pay statement. (Sec’y Stat., ¶ 9; Dillon Decl., ¶ 8.) The Secretary’s proposed repayment schedule is \$158.00 per

month, which would liquidate the debt in approximately three years as recommend by the Federal Claims Collection Standards, or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 8.)

Discussion

Petitioner disputes her liability for the debt in this case. (Petitioner's Request for a Hearing ("Pet'r Hr'g Req."), filed June 14, 2010.) 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. 31 C.F.R. § 285.11(f)(8)(ii). 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. *Id.*

On three separate occasions, this Office ordered Petitioner to file documentary evidence to prove that the debt in this case is not enforceable or past due. On June 15, 2010, this Office ordered Petitioner to "file documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due" within 45 days of the date of the Order. (Notice of Docketing.) On July 1, 2010, this Office again ordered Petitioner to "file documentary evidence to prove that the alleged debt to HUD in this case is unenforceable or not past due" on or before August 20, 2010. (Ruling and Order on Secretary's Motion for Extension of Time, dated July 1, 2010.) On September 29, 2010, this Office again ordered Petitioner to "file documentary evidence to prove that all or part of the alleged debt in this case is not past due or not legally enforceable" on or before October 18, 2010. (Order, dated September 29, 2010.) The September 29th Order stated, "Failure 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 has failed to comply with the Orders issued by this Office 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 would prove that the debt is unenforceable, I find that Petitioner's argument fails for want of proof.

Furthermore, in light of Petitioner's repeated failure to comply with the Orders, I find that sanctions pursuant to 24 C.F.R. § 26.4 are justified. 24 C.F.R. § 26.4(a) states that "[t]he hearing officer may sanction a person, including any party or representative for failing to comply with an order...; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing." 24 C.F.R. § 26.4(a) (2010). Therefore, pursuant to 24 C.F.R. § 26.4(c), which sets forth the specific sanctions that may be imposed, including "any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party..." (24 C.F.R. § 26.4(a)), I find that a determination against Petitioner is appropriate. Accordingly, I find that Petitioner has not met her burden of proof, and that the debt in this case is past due and enforceable in the amount alleged by the Secretary.

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.



H. Alexander Manuel
Administrative Judge

March 3, 2011