



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

In the Matter of:

Gwendolyn Cain,

Petitioner.

HUDOA No. 10-M-CH-AWG99
Claim No. 721006016

Gwendolyn Cain
P.O. Box 233434
Sacramento, CA 95823

Pro se

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

For the Secretary

DECISION AND ORDER

On June 23, 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 June 25, 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 June 25, 2010.)

Background

On August 14, 2000, Petitioner executed a Partial Claims Promissory Note ("HUD Note") in the amount of \$7,543.42 in favor of the Secretary. (Sec'y Stat. ¶ 2; Sautter Decl. Ex. 1.) In return, HUD advanced funds to the FHA-insured lender to bring Petitioner's mortgage current and to avoid foreclosure on the collateral property. (Sec'y Stat. ¶¶ 1-2.) Pursuant to the terms of the HUD Note, the HUD Note becomes immediately due and payable when, "Borrower has paid in full all amounts due under the primary note and related mortgage deed of trust or similar Security Instruments insured by the Secretary...." (Sautter Decl. Ex. 1 ¶ 3(A)(i).)

On or about August 24, 2001, the FHA mortgage insurance on the primary note and related mortgage was terminated, as the mortgagee indicated that the loan was paid in full. (Sec'y Stat. ¶ 6.) The Secretary filed a copy of a HUD 1 Settlement Statement ("Settlement Statement") dated August 17, 2005. The Settlement Statement reflects a payment made to First Horizon Home Loans in the amount of \$107,338.08 and several payoffs made to miscellaneous creditors. (Sautter Decl. Ex. A and C.) The Settlement Statement does not reflect any payments made to HUD.

The Secretary has made efforts to collect the alleged debt from Petitioner but has been unsuccessful. The Secretary alleges that Petitioner is in default on the HUD Note and is indebted to HUD in the following amounts:

- (a) \$3,913.30 as the unpaid principal balance as of June 30, 2010;
- (b) \$48.90 as the unpaid interest on the principal balance at 3% per annum through June 30, 2010; and
- (c) interest on said principal balance from July 1, 2010, at 3% per annum until paid.

(Sec'y Stat. ¶ 7.)

On August 24, 2009, a Notice of Intent to Collect by Treasury Offset was sent to Petitioner. (Sec'y Stat. ¶ 8.) Petitioner did not enter into a repayment agreement or request a review based on this notice. (*Id.*) Petitioner was referred to the Department of the Treasury's Treasury Offset Program on November 27, 2009. (*Id.*) On February 6, 2010, Petitioner was offset by the Treasury Offset Program in the amount of \$3,979.00 and this amount is reflected in the amount due. (*Id.*)

On June 10, 2010, a Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner. (Sec'y Stat. ¶ 9.) 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 but did not elect to do so. (Sec'y Stat. ¶ 10.) HUD has made several attempts to obtain Petitioner's current paystub and as of July 14,

2010, Petitioner had not provided HUD with a current paystub. (Sec'y Stat. ¶ 13.) The Secretary proposes a repayment schedule of \$110.00 per month or 15% of Petitioner's disposable pay. (*Id.*)

Discussion

Petitioner disputes the existence of the debt and claims that she does not owe the debt. (Pet'r's Hr'g Req.) In support of her argument, Petitioner filed, as documentary evidence: a Grant Deed; a Wells Fargo Home Mortgage Confirmation of Loan Payoff; a letter from co-borrower Mable J. Norse with attachments; a mortgage loan history from Wells Fargo Home Mortgage; and Customer Account Activity Statements from Wells Fargo Home Mortgage and Norwest Mortgage, Inc. (Pet'r's Hr'g Req. *attachs.*; Pet'r's Doc. Evid. *attachs.*)

Petitioner argues that the loan from Wells Fargo Home Mortgage ("Wells Fargo") was paid in full on August 31, 2001. (Pet'r's Hr'g Req. Ex. 2.) As previously stated, the debt that is the subject of these proceedings arose from a Partial Claims Promissory Note ("HUD Note") to secure a loan given by HUD. The HUD Note, which was executed by Petitioner and Mable Norse, states that,

"On June 1, 2027, or, if earlier, when the first of the following events occurs:

- (i) Borrower has *paid in full* all amounts due under the *primary Note* and related mortgage, deed of trust, or similar Security Instruments insured by the Secretary, or
- (ii) The maturity date of the primary Note has been accelerated, or
- (iii) The primary note and related mortgage, deed of trust or similar Security Instruments are no longer insured by the Secretary, or
- (iv) The property is not occupied by the purchaser as his or her principal residence...

[p]ayment shall be made at the following address...or any such other place as Lender may designate in writing by notice to Borrower." (emphasis added)

(Sautter Decl. Ex. 1.) Evidence that the Wells Fargo loan was paid in full is only relevant to this case because the Wells Fargo loan was the primary mortgage on the property. According to the terms of the HUD Note, satisfaction of the Wells Fargo loan made the debt owed to HUD immediately due and payable. Therefore, evidence that the Wells Fargo loan was paid in full is relevant to support a finding that the debt in this case is now due.

Petitioner also claims that, "my sister Mable Norse loan was sold to First Horizon 8/01. As you can see my name nor my signature is on Deed of Trust. [sic]" (Pet'r's Hr'g Req.) In support of her claim, Petitioner attached a letter from Mable J. Norse in which Ms. Norse states, "New Mortgage First Horizon was in my name MABLE J. NORSE not me and my sister

Gwendolyn Cain. Her signing of the promissory note is out on 8-31-2001. [sic]" (Pet'r's Hr'g Req., Ex. 3, Mable J. Norse Letter ¶ 6.) Attached to the letter was a copy of a deed of trust securing a loan from First Horizon Home Loan Corporation ("First Horizon"). Evidence that the loan from First Horizon was only in the name of Mable J. Norse is irrelevant. As previously stated, the debt that is the subject of these proceedings arose from the HUD Note, which was signed by both Petitioner and Mable Norse.

Further, paragraph 6 of the HUD Note, which can be found directly above the signatures of Petitioner and Mable Norse, states that,

"If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed...Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amount owed under this Note.

(Sautter Decl. Ex. 1.) *See also Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004) (deciding that the Secretary may enforce the full amount of a debt against any cosigner because each cosigner is jointly and severally liable for the obligation). Accordingly, I find that HUD may seek repayment of the debt from Petitioner individually.

Petitioner also argues that she does not owe the debt because she does not have an interest in the property. Specifically, Petitioner states, "I have no interest in [the] property involved" (Pet'r's Hr'g Req.) and "I have proven to you people that this is not my home" (Pet'r's Doc. Evid). In support of her argument, Petitioner filed a copy of a grant deed in which Mable J. Norse and Gwendolyn Cain conveyed the property to Mable Jane Norse on August 10, 2005. (Pet'r's Hr'g Req. Ex. 1.) Evidence that Petitioner has transferred her interest in a property is insufficient to show that she is no longer liable for the debt. 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 is not owed by Petitioner. *Cynthia Ballard Rachall*, HUDOA No. 09-H-AWG103 at 3 (August 6, 2009) (citing *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000)). Although Petitioner has submitted proof that the loan from Wells Fargo has been paid in full, Petitioner submits no such evidence from HUD that the HUD Note has been paid. Accordingly, I find that Petitioner remains liable for the full amount of the debt.

Lastly, Petitioner suggests that an administrative wage garnishment in the amount proposed by the Secretary would create a financial hardship. Petitioner states, "I was depending on my tax return to catch up on some long over due bills." (Pet'r's Hr'g Req.) 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 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.” (Notice of Docketing at 2.) Here, Petitioner submits no documentary evidence to support a financial hardship claim. 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)). Accordingly, I find that Petitioner’s financial hardship claim fails for want of proof.

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 5, 2010