



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

In the Matter of:

Jacqueline Brown,
Petitioner

HUDOA No. 10-M-NY-AWG75
Claim No. 52-0883319WU

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Pro se

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For the Secretary

DECISION AND ORDER

On April 16, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to 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 April 21, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

Background

On October 22, 1991, the Petitioner executed and delivered to Ted Parker Home Sales, a Retail Installment Contract ("Note") in the amount of \$21,805.00 which was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y Stat."), filed May 21, 2010, ¶ 2.) Contemporaneously, on October 22, 1991, the Note was assigned by Ted Parker Home Sales to Logan-Laws Financial Corporation. (Sec'y Stat., ¶ 3.) Logan-Laws Financial Corporation subsequently went out of business, and the Government National Mortgage Association ("GNMA") took over their loans. (Sec'y Stat., ¶ 4; Ex. B, Declaration of Paul St. Laurent, III, Director of the Mortgage-Backed Securities Monitoring Division, HUD ("St. Laurent Decl."), dated May 18, 2010, ¶ 4.) As GNMA (a division of HUD) is the holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec'y Stat., ¶ 5.) Petitioner is currently in default on the Note. The Secretary has made efforts to collect from the Petitioner, but has been unsuccessful. Petitioner is allegedly indebted to the Secretary in the following amounts:

- (a) \$17,481.49 as the unpaid principal balance;
- (b) \$3,929.38 as the unpaid interest on the principal balance at 14% per annum through June 24, 2004; and
- (c) interest on said principal balance from June 25, 2004 until paid.

(Sec'y Stat., ¶ 6; St. Laurent Decl., ¶ 6.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated November 22, 2004, was sent to Petitioner. (Sec'y Stat., ¶ 7; St. Laurent Decl., ¶ 7.) 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 failed to enter into such an agreement. (Sec'y Stat. ¶ 8.) Based on the financial information submitted by Petitioner, the Secretary proposes a repayment schedule of 7% of Petitioner's disposable pay. (Sec'y Stat. ¶ 9.)

Discussion

In Petitioner's Request for Hearing, Petitioner does not dispute the amount of the debt, rather she disputes the terms of the proposed repayment schedule (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed April 16, 2010.) Specifically, Petitioner states that the reason for the hearing request is "to help me pay some bills and take my daughter shopping" and "my taxes is[sic] like Christmas to me and her."

Petitioner is permitted to present evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In the Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), issued to Petitioner on April 21, 2010, this Office ordered Petitioner to "present evidence that the alleged debt is either unenforceable or not past due." The Notice of Docketing also instructed Petitioner to file "documentary evidence which will prove that repayment of the debt would cause a financial hardship to Petitioner". (*Id.*) Petitioner did not comply with the Notice of Docketing. On June 17, 2010, this Office again ordered Petitioner to file documentary evidence on or before July 8, 2010, to prove that the Note was either paid or is unenforceable on or before July 8, 2010. (Order, issued June 17, 2010.) The Order specifically stated that, "[s]hould Petitioner seek to claim that repayment of this debt would result in financial hardship, then Petitioner's documentary evidence shall include receipts, checks, or other proof of payment of necessary household expenses." (emphasis in original) (*Id.*) The Order also 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) Petitioner also failed to comply with the June 17, 2010 order.

Petitioner has failed to submit any evidence that the alleged debt is unenforceable or not past due and has failed to comply with the Orders issued by this Office. 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 claim of financial hardship 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 at the rate of 7% of Petitioner's disposable pay per pay period.



H. Alexander Manuel
Administrative Judge

October 13, 2010