



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

In the Matter of:

Patricia Guzman,
Petitioner

HUDOA No. 11-H-CH-AWG50
Claim No. 2007303323B

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Pro se

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For the Secretary

DECISION AND ORDER

On February 8, 2011, 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. 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 February 17, 2011, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated February 17, 2011.)

Background

On February 12, 2001, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note (“Note”) and Security Instrument to secure a partial claim paid on her behalf by the Secretary to pay arrearages on her primary FHA-insured mortgage and avoid foreclosure of her home. (Secretary’s Statement (“Sec’y Stat.”), filed March 7, 2011, ¶ 1, Ex. 1.) The Note is further identified by the FHA Number of 495-4717403 and the Claim Number of 721006730. (*Id.*) On or about May 23, 2002, the FHA insurance on the first mortgage was terminated, as the lender indicated the mortgage was paid via refinance into a new FHA loan (Case Number 495-6141060). (Sec’y Stat., Exh. #2, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center within HUD (“Dillon Decl.”), dated March 3, 2011, ¶ 4.) Subsequently, Petitioner executed a Subordinate Note in favor of the Secretary for HUD (HUD Claim Number 721003103). (Sec’y Stat., ¶ 4, Ex. 3; Ex. 2, Dillon Decl., ¶ 5.) The Note cited specific events that made the debt due and payable. (Sec’y Stat., ¶ 5; Dillon Decl., ¶5.) On or about September 2, 2004, the FHA insurance on the first mortgage was terminated as the lender indicated the mortgage was paid in full. (Sec’y Stat., ¶ 6; Dillon Decl., ¶ 5.)

HUD has attempted to collect against the Petitioner under the Subordinate Note, but Petitioner remains delinquent. (Sec’y Stat. ¶ 9.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD in the following amounts:

Claim No. 721006730 (Partial Claims Promissory Note):

- (a) \$6,859.62 as the unpaid principal balance as of February 28, 2011;
- (b) \$45.68 as the unpaid principal balance as of February 28, 2011 balance at 1% per annum through February 28, 2011; and
- (c) interest on said principal balance from March 1, 2011 at 1% per annum until paid.

Claim No. 721003103 (Subordinate Note), which is subject to these proceedings:

- (a) \$10,403.78 as the unpaid principal balance as of February 28, 2011;
- (b) \$399.29 as the unpaid interest on the principal balance at 4% per annum through February 28, 2011; and
- (c) interest on said principal balance from March 1, 2011 at 4% per annum until paid.

(Sec’y Stat., ¶ 10; Dillon Decl., ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner, related to Claim Number 721003103 and dated January 14, 2011. (Sec’y Stat., ¶ 8; Dillon Decl., ¶ 7.) As of March 3, 2011, the Secretary has not initiated Administrative Wage

Garnishment proceedings against Claim Number 721006730. (Sec'y Stat., ¶ 2; Dillon 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 under terms agreeable to HUD. As of March 7, 2011, Petitioner has not entered into a written repayment agreement. (Sec'y Stat., ¶ 11, Dillon Decl., ¶ 8.) As a result, the Secretary proposes a repayment schedule of \$300.00 per month, or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 12, Dillon Decl., ¶ 9.)

Discussion

Pursuant to 31 C.F.R. §285.11 (f)(8)(ii), if Petitioner disputes the existence or amount of the debt the Petitioner "must present, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect." Here, Petitioner challenges the collection of the debt owed, stating that, "We want to make sure this is not a duplicate debt. Since we are under a repayment plan, under Fed Debt Case # 2061001056A." (Pet'r's Hr'g Req, filed February 8, 2011.) Petitioner has failed, however, to file any documentary evidence with this Court to substantiate the record and prove that "Fed Debt Case # 2061001056A" is related to the Subordinate Note, which is the subject of this wage garnishment proceeding.

The Secretary contends, on the other hand, that there is no duplicate debt involved. As support, the Secretary provided documentary evidence of both the Partial Claims Promissory Note (Claim No. 721006730) and the Subordinate Note (Claim No. 721003103), demonstrating that these are separate debts entered into at different times and for different amounts. (Sec'y Stat., Exs. 1, 3.) The Secretary further states that "no collection efforts . . . via wage garnishment have taken place as of March 3, 2011 against [the Partial Claims Promissory Note]," although "HUD has attempted to collect the amounts due under the second Note," or the Subordinate Note. (Sec'y Stat., ¶ 2, ¶ 9.)

Upon a review of the record, Petitioner's assertion that the Secretary is attempting to garnish a duplicate debt fails for lack of proof. Petitioner was ordered on two occasions to file documentary evidence to prove that all or part of the alleged debt is unenforceable or not past due. (Order to Pet'r, dated March 25, 2011; Order to Show Cause, dated April 22, 2011.) This Office has consistently maintained 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*, HUDBCA No. 09-M-CH-AWG52, (June 23, 2009) (*citing Bonnie Walker*, HUDBCA No. 95-G-NY-7300 (July 3, 1996)). Since Petitioner has failed to submit evidence to meet her burden of proof by a preponderance of the evidence, her claim that the debt is unenforceable fails for want of proof.

As a final point, I further find that sanctions pursuant to 24 C.F.R. § 26.4 are justified in this case. Rule 26.4(c) of Title 24 of the Code of Federal Regulations provides:

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


Accordingly, because Petitioner has also failed to comply with any of the Orders issued by this Office, I find that Petitioner's non-compliance with the Orders issued by this Office provides a basis for rendering a decision against Petitioner pursuant to Rule 26.4(c) of Title 24 of the Code of Federal Regulations.

ORDER

For the reasons set forth above, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative wage garnishment in the amount of 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

July 12, 2011