



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

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In the Matter of:

**Taryn Manetta,**

Petitioner

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HUDOA No. 11-H-NY-AWG52

Claim No. 721006302

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For Petitioner

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For the Secretary

**DECISION AND ORDER**

On February 7, 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. 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 February 18, 2011, 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, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral, dated February 18, 2011.)

### **Background**

On February 1, 2002, Petitioner executed and delivered to the Secretary a Subordinate Note in the amount of \$7,344.39, in exchange for foreclosure relief being granted by the Secretary. (Secretary's Statement ("Sec'y. Stat"), filed March 4, 2011, at ¶ 2; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of the HUD ("Dillon Decl."), dated March 3, 2011, at ¶ 4.) The Note cited specific events that made the debt become due and payable, one being the payment in full of the primary note, which was insured against default by the Secretary. (Sec'y. Stat. ¶ 3; Dillon Decl. ¶ 4.) On or about July 6, 2009, the FHA insurance on Petitioner's primary note was terminated when the lender informed the Secretary that the note was paid in full. (Sec'y. Stat. ¶ 4; Dillon Decl., ¶ 4.)

HUD has attempted to collect this debt from Petitioner, but Petitioner remains delinquent. (Sec'y. Stat. ¶ 7; Dillon Decl. ¶ 5.) The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$6,807.64 as the unpaid principal balance as of February 28, 2011;
- (b) \$17.02 as the unpaid interest on the principal balance at 3% per annum through February 28, 2011; and
- (c) interest on said principal balance from March 1, 2011 at 3% per annum until paid.

(Sec'y. Stat. ¶ 7; Dillon Decl. ¶ 5.) Pursuant to 31 C.F.R. § 285.11(e), a Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings (the "Notice"), dated December 29, 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 under mutually agreeable terms. (Sec'y. Stat. ¶ 9.) As of March 3, 2011, Petitioner has not entered into a written repayment agreement in response to the Notice. (*Id.*)

The Secretary's proposed repayment schedule is \$190.00 per month, which will liquidate the debt in approximately three years, or 15% of Petitioner's disposable pay. (Sec'y. Stat. ¶ 14; Dillon Decl. ¶ 9.)

### **Discussion**

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 or that the terms of the proposed repayment schedule would cause her financial hardship. While Petitioner has expressed an interest in negotiating a settlement in this case, Petitioner has failed twice to comply with Orders issued by this Office to provide a Status Report regarding the parties' efforts towards reaching a settlement. (*See* Order for Status Report, dated May 20, 2011; Second Order for Status Report,

dated June 21, 2011.) Accordingly, this Office shall proceed with the issuance of a decision based on the documents currently contained in the record of this proceeding.

Petitioner does not contest the existence of the debt, but states, through counsel, that when she "paid off the CitiMortgage mortgage, sufficient funds were also paid to CitiMortgage to pay off the HUD loan." (Letter from Petitioner, Attachments "Docs. from Pet'r," filed April 6, 2011.) Further, Petitioner states that "it was Citimortgage's responsibility to send these funds to HUD." (Letter from Petitioner's Counsel, (March 16<sup>th</sup> Ltr.), filed March 16, 2011.)

To support her position, Petitioner submitted an amortization schedule to show that her principal balance on the primary mortgage was \$72,764.24 as of July 6, 2009, the payoff date alleged by Petitioner. (Docs. from Pet'r.) Petitioner also submitted a copy of a check to CitiMortgage, dated June 30, 2009, in the amount of \$93,900.59. (*Id.*) Petitioner therefore maintains that the difference between the principal balance as shown by the amortization schedule (\$72,764.24) and the amount actually paid to CitiMortgage (\$93,900.59) "should have been applied to discharge the HUD subordinate mortgage." (*Id.*)

In contrast, the Secretary states:

Neither the Subordinate Note nor HUD authorized Citimortgage to receive payments on HUD's behalf. Moreover, Petitioner has produced no evidence to show that HUD directed her to make payment to Citimortgage. More importantly, Petitioner has produced no evidence to show that she actually paid HUD's debt to Citimortgage, and HUD has received no payments from Citimortgage on Petitioner's behalf.

(Sec'y. Stat. ¶¶ 12-13.)

The Subordinate Note states that "[p]ayment shall be made at the U.S. Department of HUD c/o First Madison Services, Inc., 4 Corporate Drive, Shelton, CT 06484 or any such other place as Lender may designate in writing by notice to Borrower." (Sec'y. Stat. Ex. A.) Petitioner has not submitted any proof that HUD authorized CitiMortgage, in writing, to receive Petitioner's payments on the Subordinate Note. As a result, CitiMortgage had no responsibility to remit any payments on the Subordinate Note to HUD without first being authorized to accept payment on HUD's behalf. Petitioner therefore should have directed her payments on the Subordinate Note to HUD, rather than to CitiMortgage.

But, even if HUD had authorized CitiMortgage to accept Petitioner's payments on the Subordinate Note, Petitioner still has failed to provide sufficient documentary evidence of the alleged overpayment. The payoff statement that is required in order to fully pay Petitioner's *primary* mortgage to CitiMortgage reflects a payoff amount of \$93,900.59, the amount that corresponds with the check Petitioner wrote on June 30, 2009. (Docs. from Pet'r.) However, Petitioner assumes that, based upon the evidence presented, the payoff statement represents the amount due in order to pay off her primary mortgage *and* the Subordinate Note. Petitioner's check to CitiMortgage on June 30, 2009 only satisfied the primary mortgage and left Petitioner with the responsibility of paying the remaining balance on the Subordinate Note.

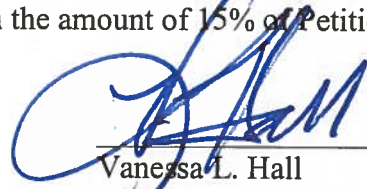
As a result, HUD has no responsibility to investigate any overpayment alleged by Petitioner. So as a recourse, Petitioner may wish to seek recovery in her respective state or local court in order to possibly recover the monies she paid to HUD in order to satisfy this legal obligation.

**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.



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Vanessa L. Hall  
Administrative Judge

August 24, 2011