



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

In the Matter of:

**Dianne L. Worrells,**  
Petitioner

HUDOA No. 11-H-NY-AWG56  
Claim No. 5476342 LL 9244

Dianne L. Worrells  
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*Pro se*

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For the Secretary

**DECISION AND ORDER**

On February 17, 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 25, 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 Feb. 25, 2011.)

### **Background**

On December 17, 1990, Petitioner executed and delivered to NC Mob Hms, d/b/a Home Town USA, a Retail Installment Contract ("Note") in the amount of \$36,284.00, which was insured against nonpayment by the Secretary pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Secretary's Statement ("Sec'y Stat.") ¶ 2, filed March 23, 2011; Declaration of Christopher C. Haspel, Director, Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association ("Ginnie Mae") within HUD ("Haspel Decl.") ¶ 3, dated March 11, 2011.) Contemporaneously, on December 17, 1990, the Note was assigned by NC Mob Hms to Logan-Laws Financial Corporation ("Logan-Laws"). (Sec'y Stat. ¶ 3; Haspel Decl. ¶ 3.) Logan-Laws was defaulted as an issuer of Mortgage Backed Securities ("MBS") due to its failure to comply with Ginnie Mae's MBS program requirements. (Sec'y Stat. ¶ 4; Haspel Decl. ¶ 4.) Upon default by Logan-Laws, all of its rights, title, and interest in Petitioner's loan were assigned to Ginnie Mae by virtue of the Guarantee Agreement entered into between Logan-Laws and Ginnie Mae. (Sec'y Stat. ¶ 5; Haspel Decl. ¶ 4.) As Ginnie Mae is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec'y Stat. ¶ 6; Haspel Decl. ¶ 5.)

Petitioner is currently in default on the Note. (Sec'y Stat. ¶ 7; Haspel Decl. ¶ 6.) The Secretary has made efforts to collect from Petitioner other than by administrative wage garnishment, but has been unsuccessful. (Sec'y Stat. ¶ 7; Haspel Decl. ¶ 6.) The Secretary alleges that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$13,211.33 as the unpaid principal balance; and
- (b) \$0.00 as the unpaid interest on the principal balance at 14% per annum through March 11, 2011.

(Sec'y Stat. ¶ 7; Haspel Decl. ¶ 6.) Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated January 20, 2011, was sent to Petitioner. (Sec'y Stat. ¶ 8; Haspel 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 mutually agreeable terms. (Sec'y Stat. ¶ 9; Haspel Decl. ¶ 7.) As of March 22, 2011, Petitioner has not entered into a written repayment agreement. (Sec'y Stat. ¶ 9.)

The Secretary's proposed repayment schedule is 10% of Petitioner's disposable pay. (Sec'y Stat. ¶ 12; Haspel Decl. ¶ 7.)

### **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." Petitioner objects to the enforceability of the debt on

two grounds: (1) Petitioner alleges that HUD should pursue collection against her ex-husband, due to his co-liability on the Note, and (2) Petitioner also alleges that she would suffer financial hardship from the administrative wage garnishment in the amount proposed by the Secretary. (Pet'r's Hr'g Req., filed Feb. 17, 2011; Letter with Attachments from Pet'r, filed March 16, 2011.)

In support of Petitioner's argument that she does not owe the debt due to her ex-husband's co-liability, Petitioner states:

I feel as though I do not owe any money to this debt[.] We Divorce[d] 14 yr [sic] ago. I am sorry I did not try to have my name removed from the loan. . . . When I call [sic] about 2 months ago, they said agreement [sic] had to be made. Well he did. . . . [My ex-spouse] agree[d] to pay for loan [sic] so why are you after me. . . . Please release [sic] me of this debt and continue to collect from Donnie."

(Pet'r's Hr'g Req.)

This Office has previously held that co-signers of a loan are jointly and severally liable to the obligation, and as a result, "a creditor may sue the parties to such obligation separately or together." *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). As such, "the Secretary may proceed against any co-signer for the full amount of the debt" because each co-signer is jointly and severally liable for the obligation. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Additionally, the Secretary's right to collect the alleged debt in this case emanates from the terms of the Note. *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the subject debt, she must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (Oct. 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (Oct. 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (Jan. 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (Feb. 28, 1986).

In the instant case, Petitioner has failed to produce evidence of a written release from her obligation to pay the alleged debt or evidence of valuable consideration paid to HUD in satisfaction of the debt, thus rendering the alleged debt unenforceable. While Petitioner may be divorced from her ex-spouse, neither the Secretary nor the lender was a party to the divorce action. So as a recourse, Petitioner may seek to enforce, in the state or local court, either the divorce decree that was granted against her ex-husband or any agreement entered into between Petitioner and her ex-spouse regarding the debt, so that Petitioner may recover from her ex-spouse monies paid to HUD by her in order to satisfy this legal obligation. See *Michael York*, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3. I find, therefore, without proof of a written release, Petitioner remains legally obligated to pay the subject debt as a co-signor on the Note.

Second, Petitioner states that the administrative wage garnishment in the amount proposed by the Secretary would create a financial hardship. In support of her financial hardship claim, Petitioner provided this Court with a copy of her weekly pay statement, copies of bills, and proofs of payment. (Letter with Attachments from Pet'r.) Petitioner's weekly pay statement for the pay period of February 20, 2011 to February 26, 2011 indicates that Petitioner's weekly gross pay is \$574.75, or \$2,299.00 monthly. The Secretary is authorized to garnish up to 15% of the debtor's disposable pay, which is determined "after the deduction of health insurance premiums and any amounts required by law to be withheld. . . . includ[ing] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). After subtracting allowable deductions for federal tax, \$233.28; social security, \$81.24; Medicare, \$28.08; state tax, \$108.00; and medical insurance, \$364.20, Petitioner is left with a monthly disposable income of \$1,484.20.

The documentary evidence submitted by Petitioner for her essential monthly household expenses includes: rent, \$425.00; prescriptions averaging \$83.75; gasoline expenses averaging \$129.36; phone bills averaging \$125.86; insurance payments averaging \$132.00; and public utility bills averaging \$209.35. Petitioner also alleged other additional expenses for: food, \$150.00; clothing, \$50.00; and electricity, \$250.00, but she failed to file proofs of payment to support these additional expenses. (Letter with Attachments from Pet'r.) However, this Court has maintained that credit may be given for certain essential monthly living expenses, such as expenses for food, shelter, or utilities, in instances where the listed monthly expenses provide reasonable and necessary living expenses, even though proofs of payment have not been provided. *David Herring*, HUDOA No. 07-H-NY-AWG53, at 4-5 (July 28, 2008); *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28, at 4 (July 30, 2004). Similarly, in this case, this Court will consider allowances to pay for reasonable and necessary living expenses. Therefore, this Court also will credit the amounts alleged for monthly living expenses for: food, \$150.00, clothing, \$50.00, and electricity, \$250.00.

Certain other expenses were not credited toward Petitioner's household expenses because Petitioner has not submitted sufficient documentary evidence to establish that these household expenses are essential on a monthly basis: an RBC credit card, a car repair bill, a check paid to the DMV, checks paid to Rid-A-Pest, a check paid to the tax collector, four checks paid for medical expenses, checks paid to Taylor's Exxon, and checks paid to CVS. As a result, based upon the evidence provided by Petitioner, Petitioner's essential monthly household expenses total \$1,555.32.

Petitioner's monthly living expenses of \$1,555.32 exceed her monthly disposable income of \$1,484.20 by \$71.12. A 10% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$148.74 and would leave Petitioner with a negative balance of (\$-219.54). A 5% garnishment rate would lower Petitioner's garnishment amount to \$74.21 and would result in a negative balance of (\$-145.33) for Petitioner.

Pursuant to 31 C.F.R. § 285.11(k)(3), this Court has the authority to order garnishment at a lesser rate based upon the record before it, particularly in cases where financial hardship is found. Upon due consideration, this Court finds that Petitioner has submitted sufficient documentary evidence to substantiate that the administrative wage garnishment of her disposable


income, in the amount sought by the Secretary, would create a financial hardship. While the Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, a garnishment amount at any percentage of Petitioner's disposable income would constitute a financial hardship sufficient enough to forego collection at this time.

### **ORDER**

Based on the foregoing, I conclude that an administrative wage garnishment would create a financial hardship for Petitioner, and, as such, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment shall remain in place indefinitely. Therefore, it is hereby

**ORDERED** that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment because of Petitioner's financial circumstances at this time.

**However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment if, in the future, Petitioner's income increases or her expenses for necessities are reduced.**

  
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Vanessa L. Hall  
Administrative Judge

November 7, 2011