



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

In the Matter of:

Sabrina Howard,
Petitioner

HUDOA No. 11-H-NY-AWG60
Claim No. 721005972

Sabrina Howard
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Pro se

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For the Secretary

DECISION AND ORDER

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 a mechanism for the collection of debts owed to the United States Government.

The administrative judges of this Court 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 March 1, 2011, this Court 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 March 1, 2011.)

Background

On March 1, 2004, Petitioner executed and delivered to the Secretary a Subordinate Note in the amount of \$13,377.56, in exchange for foreclosure relief being granted by the Secretary. (Secretary's Statement ("Sec'y Stat."), filed March 18, 2011, ¶ 2, Ex. A.) Paragraph 4 of the Subordinate Note cites specific events which make the debt become due and payable. (Sec'y Stat. ¶ 3.) One of those events is the payment in full of the primary note, which was insured against default by the Secretary. (*Id.*) On or about November 26, 2008, the FHA insurance on Petitioner's primary note was terminated when the lender informed the Secretary that the primary note was paid in full. (Sec'y Stat. ¶ 4, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center within HUD ("Dillon Decl."), dated March 14, 2011, ¶ 4.)

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

- (a) \$11,517.77 as the unpaid principal balance as of February 28, 2011;
- (b) \$28.79 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.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated March 25, 2010, was sent to Petitioner. (Sec'y Stat. ¶ 8; Dillon Decl. ¶ 6.) Pursuant to 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; Dillon Decl. ¶ 7.) As of March 14, 2011, Petitioner had not entered into a written repayment agreement in response to the Notice. (Sec'y Stat. ¶ 9, Dillon Decl. ¶ 7.) A Wage Garnishment Order dated April 26, 2010 was issued to the Petitioner's employer by the U.S. Department of the Treasury. (Sec'y Stat. ¶ 10; Dillon Decl. ¶ 8.) Based on the issuance of the Wage Garnishment Order, Petitioner's pay has been garnished 41 times. (Sec'y Stat. ¶ 11; Dillon Decl. ¶ 9.) The total garnishment to date is \$3,302.14. (Sec'y Stat. ¶ 11; Dillon Decl. ¶ 9.) These payments have been credited to Petitioner's account and are reflected in the balance. (Sec'y Stat. ¶ 11, Dillon Decl. ¶ 9.)

As of March 14, 2011, Petitioner has not provided HUD with her current pay stub. (Sec'y Stat. ¶ 12; Dillon Decl. ¶ 10.) Administrative Wage Garnishment at 15% of Petitioner's disposable income has resulted in a repayment schedule of \$80.54 bi-weekly. (Sec'y Stat. ¶ 12; Dillon Decl. ¶ 10.) Therefore, the Secretary's proposed payment schedule is \$80.54 bi-weekly or 15% of Petitioner's disposable income. (Sec'y Stat. ¶ 12, Dillon Decl. ¶ 10.)

The Secretary did not accept Petitioner's settlement offer of \$10,075.40, as it was determined that acceptance of the offer was not in the Government's best interest. (Sec'y Stat. ¶ 12; Dillon Decl. ¶ 11.) Petitioner has indicated to HUD that she wishes to withdraw her request for a hearing on this matter as she intends to pay the debt. (Sec'y Stat. ¶ 14, Dillon Decl. ¶ 12.)

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 does not contest the existence or amount of the debt claimed by the Secretary. (Administrative Wage Garnishment Hearing Resolution, filed February 22, 2011.) In her hearing request, Petitioner stated that, "I am requesting that the garnishment be stopped and pay \$10,075.40 to settle the garnishment. Amount loan on property is for \$13,377.54." (*Id.*) She also claimed an inability to repay this debt due to adverse financial circumstances. (*Id.*)

In response to Petitioner's proposed settlement offer, the Secretary states that "Petitioner's proposed settlement offer of \$10,075.40 was not accepted by the Secretary, since it was not in the Government's best interest." (Sec'y. Stat., ¶13; Dillon Decl., ¶11.) The Secretary further states that Petitioner wishes to withdraw her hearing request since she intends to pay her debt. (Sec'y Stat. ¶ 14; Dillon Decl. ¶ 12.) Specifically, the Secretary refers to an e-mail from Petitioner to Kimberly A. Tompkins, dated March 8, 2011, as proof of Petitioner's intentions. (Dillon Decl., Ex. A.) In the e-mail, Petitioner stated:

Per our conversation earlier today March 8, 2011[,] I am requesting the appeal to be considered null and void my current principal balance is approximately \$11,517.77 this principal balance will be paid by either a personal loan or equity loan and the difference to be offset by my income tax return when filed.

(Dillon Decl., Ex. A.)

This e-mail from Petitioner is hereby deemed a Motion to Withdraw Appeal. Aside from Petitioner's desire to withdraw her appeal, this Court finds that Petitioner has failed to provide sufficient documentary evidence to prove that the amount of the debt is incorrect, unenforceable, or not past due, or that the proposed repayment schedule would create a financial hardship for Petitioner. Petitioner has been ordered by this Court on three occasions to file documentary evidence in support of her position, but Petitioner has failed to comply. (Notice of Docketing 2; Order to Petitioner, dated April 6, 2011; Order to Show Cause, dated May 19, 2011.) This Court 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*, HUDBCA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

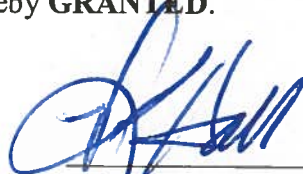
ORDER

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.

Petitioner's Motion to Withdraw Appeal is hereby **GRANTED**.



Vanessa L. Hall
Administrative Judge

September 28, 2011