



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

In the Matter of:

Janie Polk,

Petitioner

HUDOA No. 11-H-NY-AWG95
Claim No. 5443862

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Pro se

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For the Secretary

DECISION AND ORDER

On May 3, 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 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 May 5, 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 May 5, 2011.)

Background

On December 26, 1989, the Petitioner executed and delivered to AAA Homes a Manufactured Home Retail Installment Sales Contract & Security Agreement ("Note") in the amount of \$19,316.88, 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, Ex. A, filed May 20, 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 May 20, 2011.) Contemporaneously, on December 26, 1989, the Note was assigned by AAA Homes to SAMCO Mortgage Corporation ("SAMCO"). (Sec'y Stat. ¶ 3; Haspel Decl. ¶ 3.) On April 1, 1991, the Note was assigned by SAMCO Mortgage Corporation to Ginnie Mae. (Sec'y Stat. ¶ 4; Haspel Decl. ¶ 4.) As GNMA is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec'y Stat. ¶ 5; Haspel Decl. ¶¶ 4-5.)

Petitioner is currently in default on the Note. (Sec'y Stat. ¶ 6; Haspel Decl. ¶ 6.) The Secretary has made efforts to collect from Petitioner, but has been unsuccessful. (Sec'y Stat. ¶ 6; Haspel Decl. ¶ 6.) Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$7,085.17 as the unpaid principal balance;
- (b) \$15.43 as the unpaid interest on the principal balance at 13.25% per annum through May 18, 2011;
- (c) interest on said principal balance from May 19, 2011 until paid.

(Sec'y Stat. ¶ 6; Haspel Decl. ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated November 5, 2009 was sent to Petitioner. (Sec'y Stat. ¶ 7; 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. ¶ 8; Haspel Decl. ¶ 7.) To date, Petitioner has not entered into a written repayment agreement. (Sec'y Stat. ¶ 8.)

The Secretary's proposed repayment schedule is 10% of Petitioner's disposable pay. (Sec'y Stat. ¶ 12; Haspel Decl. ¶ 8.)

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, stating that the debt does not exist because "we have the release paper on loan." (Pet'r's Hr'g Req., filed May 3, 2011.) Petitioner provided the Court with a copy of the release of lien on her home, which indicates that Ginnie Mae's lien was released on September 29, 2010. (Petitioner's Documentary Evidence ("Pet'r's Evid."), filed June 20, 2011.)

In contrast, the Secretary states:

As explained to Petitioner in a letter dated September 30, 2010 issued by Ofori Lender Services . . . the release of lien on title does not eliminate Petitioner's obligation to repay the outstanding balance due on the Note. . . . While [Ginnie Mae], at its option, released its lien on the manufactured home that secured the Note, [Ginnie Mae] reserves the right to collect the outstanding indebtedness, pursuant to the terms of the Note and Petitioner's signed promise to pay.

(Sec'y Stat. ¶¶ 10-11.)

Upon reviewing the Note, it states that the Note is "subject in whole or in part to Texas law." (Sec'y Stat., Ex. A.) Texas law therefore governs the effect of the extinguishment of the lien on Petitioner's mobile home title. Based on Texas law, this Court finds that the extinguishment of the lien does not affect Petitioner's remaining obligation on the Note. "A debt or obligation may be enforced even though an action to enforce the lien is barred." 51 AM. JUR. 2d *Liens* § 13 (2011); *see also Elliot v. Booth*, 44 Tex. 180, 184 (1875) ("The debt, however, is the principal, the lien merely an incident."); *Texas Bank & Trust Co v. Custom Leasing, Inc.*, 402 S.W.2d 926, 929 (Tex. Civ. App. 1966) ("A lien in itself is neither property nor a debt, but a right to have satisfaction out of property to secure the payment of the debt."). As such, extinguishment of a lien does not affect the enforceability of the underlying debt that gave rise to the lien. "Although a lien is an incident of, and inseparable from the debt it secures, it is distinct from that debt; liens relate to assets or collateral, while the indebtedness underlying a lien appertains to a person or legal entity (the debtor)." 51 AM. JUR. 2d *Liens* § 13 (2011); *see also Custom Leasing*, 402 S.W.2d at 929. In this case, the release of the lien on the mobile home does not necessarily indicate that HUD has been fully paid or has forgiven any amount due under the Note. Release of the lien instead means that HUD no longer has a security interest in Petitioner's property. As a result, even though the lien on the title of the mobile home has been released, Petitioner remains legally obligated to pay the remaining balance of the alleged debt.

Furthermore, Petitioner was also on notice that release of the lien on the title of the mobile home would not eliminate her obligation to pay the debt. The record shows that Ofori Lender Services mailed a letter to Petitioner in which Ofori's representative stated that:

The release of lien on the title does not eliminate your outstanding debt on your home. Only the lien on the mobile home has been released. The investor reserves any and all rights to collect on the outstanding balance pursuant to your original contract and signed personal promise to pay.

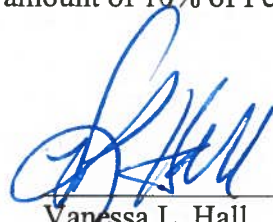
(Sec'y Stat., Ex. D.) Therefore, this Court finds that the record not only supports that Petitioner had sufficient notice that the release of the lien on the mobile home had not released her from the subject debt, but the record also supports that such release did not affect the underlying enforceability of the debt Petitioner allegedly owed to HUD in this case.

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 10% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

October 25, 2011