



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

In the Matter of:

Lore A. Salas,
Petitioner

HUDOA No. 11-M-CH-AWG111
Claim No. 780468564OA

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Pro se

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DECISION AND ORDER

On June 28, 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 June 28, 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 June 28, 2011.)

Background

On June 19, 1999, Petitioner executed and delivered to Crestline Funding Corporation an installment note (the “Note”) in the amount of \$25,000.00 for a Property Improvement Home loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed July 28, 2011; Declaration of Gary Sautter, Acting Director, Asset Recovery Division, Financial Operations Center of HUD (“Sautter Decl.”) ¶ 3, dated July 13, 2011.) Subsequently, the Note was assigned to TMS Mortgage, Inc., a New Jersey Corporation D/B/A The Money Store. (Sec’y Stat. ¶ 2; Sautter Decl. ¶ 3.) Petitioner failed to make payments as agreed in the Note. (Sec’y Stat. ¶ 3; Sautter Decl. ¶ 3.) Consequently, HomEq Servicing Corp., a successor by merger to TMS Mortgage, Inc., assigned the Note to the United States of America in accordance with 24 C.F.R. § 201.54 (2011). (Sec’y Stat. ¶ 3.) The assignment of the Note to HUD, however, was misplaced, lost, or destroyed. (Sec’y Stat. ¶ 4; Sautter Decl. ¶ 4.) After a thorough and diligent search, the Secretary has been unable to locate the assignment of the Note to HUD. (Sec’y Stat. ¶ 4; Sautter Decl. ¶ 4.) The Note has not been negotiated or assigned to any other person or party as of July 28, 2011. (Sec’y Stat. ¶ 4; Sautter Decl. ¶ 4.) On February 15, 2002, the lender certified under Section A, Number 3 of the Claim for Loss Transmittal that the Note was assigned to the United States of America. (Sec’y Stat. ¶ 5, Ex. A2; Sautter Decl. ¶ 5.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. (Sec’y Stat. ¶ 6; Sautter Decl. ¶ 6.) The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$24,376.90 as the unpaid principal balance as of July 5, 2011;
- (b) \$6,103.42 as the unpaid interest on the principal balance at 5% per annum through July 5, 2011; and
- (c) interest on said principal balance from July 6, 2011, at 5% per annum until paid.

(Sec’y Stat. ¶ 6; Sautter Decl. ¶ 6.) A Notice of Intent to Initiate Administrative Wage Garnishment, dated January 3, 2011, was sent to Petitioner by certified mail. (Sec’y Stat. ¶ 7; Sautter 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. (Sec’y Stat. ¶ 8; Sautter Decl. ¶ 8.) Petitioner did not enter into a repayment agreement based on the January 3, 2011 letter. (Sec’y Stat. ¶ 8; Sautter Decl. ¶ 8.)

On March 4, 2011, HUD received three Treasury Offset Program (“TOP”) offsets in the amounts of \$2,480.83, \$1,342.43, and \$1,334.55, totaling \$5,157.81. (Sec’y Stat. ¶ 10; Sautter Decl. ¶ 10.) These offsets are reflected in the outstanding balance noted above. (Sec’y Stat. ¶ 10; Sautter Decl. ¶ 10.) Based on the issuance of the Wage Garnishment Order, HUD has

received five garnishments from April 26, 2011 to July 5, 2011 in the amount of \$1,297.25. (Sec'y Stat. ¶ 11; Sautter Decl. ¶ 11.) These payments are also reflected in the outstanding balance noted above. (Sec'y Stat. ¶ 11; Sautter Decl. ¶ 11.)

The Secretary's proposed repayment schedule is \$287.11 bi-weekly, or 15% of Petitioner's disposable pay. (Sec'y Stat. ¶ 12; Sautter 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 objects to the proposed administrative wage garnishment on three grounds, stating that: (1) Petitioner has no recollection of agreeing to the loan that is the subject of this proceeding; (2) this debt is the responsibility of Petitioner's ex-husband; (3) the IRS has not forwarded Petitioner's payments to HUD; and (4) administrative wage garnishment in the amount proposed by the Secretary would cause Petitioner financial hardship. (Pet'r's Hr'g Req., filed June 28, 2011; Pet'r's Doc. Evid., filed Oct. 17, 2011.)

Petitioner first alleges that she has no recollection of agreeing to the loan. However, the Secretary, by filing a copy of the Note, has made a prima facie showing that Petitioner is obligated to repay this debt based on her status as a co-debtor, which is evidenced by her signature on the Note. (Sec'y Stat., Ex. A.) Petitioner's memory, or lack thereof, is not a basis for determining the enforceability of the Note, and absent substantive evidence indicating that Petitioner did not consent to the terms of the Note, the Secretary's filing provides compelling evidence that Petitioner agreed to the loan and is therefore obligated to repay the debt.

Petitioner next claims that it is inequitable that she be held responsible for the balance of this debt because "Mr. Salas may have been the applicant" and she has been "forced to pay due to his irresponsibility." (Pet'r's Hr'g Req.) This Court has previously held that co-signers of a loan are jointly and severally liable for the obligation, and that, "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). HUD is therefore entitled to enforce the Note against Petitioner, as co-debtor, for the entire balance of the debt.

Petitioner also stated that the IRS had not forwarded to HUD all proceeds from her tax returns, which allegedly amounted to \$16,000.00. (Pet'r's Hr'g Req.) Petitioner, however, has not filed any supporting documentary evidence to substantiate her claim that her federal benefits were offset in the amount of \$16,000.00. The Secretary stated that "HUD received three TOP offsets in the amounts of \$2,480.83, \$1,342.43 and \$1,334.55 totaling \$5,157.81." (Sautter Decl. ¶ 10.) The Secretary added that "[t]here were no other TOP offsets received on this account." (*Id.*) In the absence of a sworn statement or credible evidence from Petitioner supporting her claim of \$16,000.00 in offsets, this Court finds that the Secretary properly accounted for Petitioner's prior offsets, totaling \$5,157.81, in calculating Petitioner's amount of indebtedness.

for purposes of this administrative wage garnishment. This Court also finds that Petitioner is indebted in the amount claimed by the Secretary.

Finally, Petitioner claims that the administrative wage garnishment, in the amount proposed by the Secretary, would cause her financial hardship. As support for her financial hardship claim, Petitioner filed copies of pay statements and proofs of payment for her monthly expenses. (Pet'r's Doc Evid.) Petitioner's bi-weekly pay statements for the pay periods between September 9, 2010 and September 8, 2011 indicate that Petitioner's average bi-weekly gross pay is \$1,1714.24, or \$3,428.48 monthly. (*Id.*) 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, \$76.50; MED/EE, \$40.38; OASDI/EE, \$133.64; state tax, \$42.78; health insurance, \$488.28; dental insurance, \$38.26; vision insurance, \$12.24; and union dues, \$18.86, Petitioner is left with a monthly disposable income of \$2,577.54.

The documentary evidence filed by Petitioner for her essential monthly household expenses are: groceries, \$531.62; gasoline, \$208.04; phone, \$120.00; rent, \$1,080.00; public utilities, \$165.73; gas, \$21.90; medical insurance for Petitioner's daughter, \$21.00; prescriptions, \$72.73; and car insurance, \$65.33. (Pet'r's Doc. Evid.) This Court deems Petitioner's claimed phone expense of \$184.20 as excessive, and accordingly reduced it to reflect a more reasonable amount of \$120.00. Certain other expenses were not credited toward Petitioner's monthly household expenses because Petitioner has not submitted sufficient documentary evidence to establish that these household expenses are necessary: an orthodontics bill for Petitioner's daughter, internet/cable, and college expenses for Petitioner's two children. Therefore, Petitioner's combined expense for essential monthly household expenses totals \$2,286.35.

Petitioner's disposable income of \$2,577.54 exceeds her monthly living expenses of \$2,286.35 by \$291.19. A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$386.63 per month and would leave Petitioner with a negative balance of \$95.44. A garnishment rate of 10% would result in a garnishment amount of \$257.75 and would leave Petitioner with a positive balance of \$33.44. A 5% garnishment rate would lower Petitioner's garnishment amount to \$128.88 and would leave Petitioner with a positive balance in the amount of \$162.31.

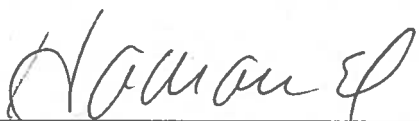
Pursuant to 31 C.F.R. § 285.11(k)(3), this Court has the authority to order garnishment at a lesser rate based upon the record before it in cases where financial hardship is found. Upon consideration, this Court finds that Petitioner has filed sufficient documentary evidence to substantiate her claim that the administrative wage garnishment of her disposable income, in the amount sought by the Secretary, would cause 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 to justify forbearance of collection at this time.

ORDER

Based on the foregoing, I find that an administrative wage garnishment would create a financial hardship for Petitioner. 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. It is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment 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 sufficiently reduced.



H. Alexander Manuel
Administrative Judge

November 30, 2011