



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

In the Matter of:

**CLOIS HUNTER,**

Petitioner.

HUDOA No. 11-M-CH-AWG83

Claim No. 7-21004364OA

Clois Hunter  
208 Pi St.  
Belle Chasse, LA 70037

*Pro se*

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Counsel for the Secretary

**DECISION AND ORDER**

On April 11, 2011, this Office received Petitioner's request for a hearing concerning the proposed administrative wage garnishment of her income relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary"). 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 adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. 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 any proposed 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 April 13, 2011, this Office stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral (“Notice of Docketing”), 2.)

### **Background**

To bring her primary mortgage current and to avoid foreclosure, Clois L. Hunter, a/k/a Clois Hunter (“Petitioner”), executed and delivered a Subordinate Note dated June 1, 2006 to the Secretary in the amount of \$5,571.44 for funds advanced by the Secretary to Petitioner’s FHA-insured lender. (Sec’y Stat., ¶ 2; Ex. A, Note.) The terms of the Subordinate Note provide that the Subordinate Note is payable upon the occurrence of certain events, including, e.g., if Petitioner has paid in full all amounts due under the primary note and related mortgage insured by the Secretary, or if the primary note and related mortgage are no longer insured by the Secretary. (Sec’y Stat., ¶ 3; Ex. A, ¶¶ 4(i) and (iii).)

On or about January 1, 2007, the FHA insurance on the primary note and related mortgage was terminated, as the lender indicated the mortgage was paid in full. (Sec’y Stat., ¶ 4; Declaration of Brian Dillon, Director, Asset Recover Division, Financial Operations Center for HUD (“Dillon Decl.”), ¶ 4.) The Secretary alleges Petitioner is currently in default on the Subordinate Note and is justly indebted to the Secretary in the following amounts:

- (a) \$5,571.44 as the unpaid principal balance as of April 30, 2011;
- (b) \$891.36 as the unpaid interest on the principal balance at 4.00% per annum through April 30, 2011; and
- (c) interest on said principal balance from May 1, 2011, at 4.00% per annum until paid.

(Dillon Decl., ¶ 5.)

The Secretary has made efforts to collect this alleged debt from Petitioner but has been unsuccessful. (Sec’y Stat. ¶ 5.) A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated February 17, 2011 (“Notice of Intent”) was sent to Petitioner. (*Id.* at ¶ 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 terms agreeable to HUD, but has not elected to do so. (*Id.* at ¶ 7; Dillon Decl., ¶ 7.)

The Secretary has attempted to obtain Petitioner’s current pay statement, but as of May 12, 2011, Petitioner has not provided HUD with her current pay statement. (Sec’y Stat., ¶ 8.) The Secretary, therefore, proposes a repayment schedule of \$179.52 per month, which will liquidate the debt in approximately three years as recommended by Federal Claims Collection Standards, or 15% of Petitioner’s disposable income. (*Id.* at ¶ 8.)

### **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 amount of the alleged debt is

incorrect. Petitioner may also 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. 31 C.F.R. § 285.11(f)(8)(ii). In this case, Petitioner disputes the existence of the debt and claims that it was "paid off at time of sale of home." (Pet'r's Hr'g Req.).

On three separate occasions, this Office ordered Petitioner to file documentary evidence in support of her claim that she paid off the debt in this case when she sold her home. (*See*, Notice of Docketing, 2; Order, dated June 9, 2011; Order, dated August 11, 2011.) The most recent order requiring Petitioner to file her documentary evidence included the following language "Failure to comply with this Order may result in sanctions being imposed by the Court pursuant to 24 C.F.R. § 26.4, including judgment being entered on behalf of the opposing party, or a decision based on the documents in the record of this proceeding." (Order, dated August 11, 2011.)

As of the date of this Decision and Order, Petitioner has failed to file any evidence proving that the alleged debt in this case is unenforceable or not past due and has, therefore, failed to comply with the orders issued by this Office. This Office 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*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (*citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). As Petitioner has not filed any evidence in support of his claim that she does not owe the debt, this Office finds that Petitioner's argument fails for want of proof.

Additionally, this Office finds it appropriate to sanction Petitioner under 24 C.F.R. § 26.4. The regulation states that "[t]he hearing officer may sanction a person, including any party or representative for failing to comply with an order...; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing." 24 C.F.R. § 26.4(a). Accordingly, pursuant to 24 C.F.R. § 26.4(c), which sets forth the specific sanctions that may be imposed and includes "any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party..." (24 C.F.R. § 26.4(a)), this Office finds that Petitioner has not met her burden of proof, and that the debt in this case is past due and enforceable in the amount alleged by the Secretary.

### **ORDER**

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

It is hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15 percent of Petitioner's disposable pay.



H. Alexander Manuel  
Administrative Judge

October 18, 2011