



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

In the Matter of:

Annie Louise Fuller,

Petitioner.

HUDOA No: 11-M-NY-AWG28
HUD Claim No: 705298 First
Beneficial 9248

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Pro se

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For the Secretary

DECISION AND ORDER

On November 15, 2010, Petitioner filed a hearing request concerning a proposed administrative wage garnishment action by the U.S. Department of Housing and Urban Development ("HUD") to collect on alleged debt against Petitioner. 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 alleged debt in contested administrative wage garnishment proceedings are enforceable against the 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 and by 24 C.F.R. Part 26, Subpart A. 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 November 23, 2010, 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”), dated November 23, 2010.)

Background

On March 21, 2000, Petitioner executed and delivered to First Beneficial Mortgage Corporation, a Promissory Note (“Note”) in the amount of \$59,232.00, which 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.”), filed December 22, 2010, ¶ 2, Ex. A, Note.)

Contemporaneously, on March 21, 2000, the Note was assigned by First Beneficial Mortgage Corporation (“First Beneficial”) to the Government National Mortgage Association (“GNMA”). (*Id.* at ¶ 3, Ex. B, Assignment.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (*Id.* at ¶ 4.)

Petitioner is currently in default on the Note. The Secretary made efforts to collect from the Petitioner, but has been unsuccessful. (*Id.* at ¶ 5; Ex. C, Declaration of Christopher C. Haspel, Director of the Mortgage-backed Securities Monitoring Division of GNMA within HUD (“Haspel Decl.”), dated December 17, 2010, ¶ 6.) Petitioner is alleged to be indebted to the Secretary in the following amounts:

- (a) \$57,715.62 as the unpaid principal balance;
- (b) \$31,000.33 as the unpaid interest on the principal balance at 9.5% per annum through October 24, 2007; and
- (c) interest on said principal balance from October 25, 2007 until paid.

(Sec’y Stat., ¶ 5; Haspel Decl., ¶ 6.)

On June 16, 2009, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner. (Sec’y Stat., ¶ 6; 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, but did not elect to do so. (Sec’y Stat., ¶ 9; Haspel Decl., ¶¶ 7-8.) The Secretary’s proposed repayment schedule is 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 10; Haspel Decl., ¶ 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 by operation of law. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner disputes the existence of the

debt in this case. Specifically, Petitioner provided a Release of Lien, which purports to release her from liability for the subject debt. (Petitioner's Hearing Request ("Pet'r Hr'g Req."), dated November 15, 2010.) In response, the Secretary refers to an October 25, 2010 letter to Petitioner explaining that the Release of Lien on the title to her mobile home does not eliminate Petitioner's obligation to repay the outstanding balance on the original contract. (Sec'y Stat., ¶ 8, Ex. D, Letter.) In fact, the cover letter sent to Petitioner by the lender, dated October 25, 2010 (Sec'y Stat., Ex. D, Letter), specifically states that:

[t]he 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 ongoing contract and signed promise to pay.

Petitioner's claim that she does not owe the subject debt fails because Petitioner failed to prove that the Release of Lien on the Title released Petitioner from her obligation to repay the subject debt to HUD. This Office has held that in order to prove that Petitioner has satisfied the debt to HUD, "there must either be a release in writing from HUD specifically discharging Petitioner's obligation, or valuable consideration accepted by lender from Petitioner, which would indicate an intent to release." *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (Feb 28, 1986). Petitioner has not provided this office with any release from liability.

Petitioner's claim also fails for lack of proof. This Office has previously held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or unenforceable." *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996).) Therefore, in the absence of documentary evidence to support Petitioner's assertion that she does not owe the alleged debt, this Office finds that Petitioner's claim fails for lack of proof.

Finally, a finding against Petitioner is justified on the bases of her noncompliance with the Orders issued by this Office. On November 23, 2010, this Office ordered Petitioner to file documentary evidence to prove that all or part of the alleged debt to HUD in this case is unenforceable or not past-due, or that repayment of the debt would cause her financial hardship. (Notice of Docketing.) Petitioner failed to comply with the Order. The Secretary, on the other hand, filed the proposed repayment schedule required under 31 C.F.R. § 285.11(3)(2)(ii) and documentary evidence proving that Petitioner's alleged debt to HUD is enforceable and past-due. (*Id.*) The Secretary filed his statement on December 22, 2010, setting forth the documentary evidence in support of his claim against Petitioner for the debt owed to HUD. (Sec'y Stat.)

On January 13, 2011, a second Order was issued ordering Petitioner to file documentary evidence as sought in the Notice of Docketing. (Order, dated January 13, 2011.) This Order stated that "[f]ailure to comply with this Order shall result in a decision based on the documents in the record of this proceeding." (*Id.*) Petitioner failed to comply with this Order as well.

24 C.F.R. § 26.4(a) 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) (2010). Therefore, pursuant to 24 C.F.R. § 26.4(c), which sets forth the specific sanctions that may be imposed, including “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 enters judgment in favor of the Secretary.

ORDER

For the reasons set forth above, this Office finds the debt that is the subject of this proceeding to be past due and enforceable in the amount alleged by the Secretary.

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% of Petitioner’s disposable pay, until fully paid.



H. Alexander Manuel
Administrative Judge

February 28, 2011