



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

In the Matter of:

Karen Baldwin,
Petitioner.

HUDOA No. 11-M-NY-AWG49
Claim No. 2010280741

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Pro Se

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DECISION AND ORDER

On February 7, 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 are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if contested by a 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. 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 February 11, 2011, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

Background

On May 27, 1992, Petitioner executed and delivered to Ideal Homes, Inc. a Retail Installment Contract ("Note"), in the amount of \$24,633.00, 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."), filed March 11, 2011, ¶ 3, Ex. A.) Contemporaneously, on May 27, 1992, the Note was assigned by Ideal Homes, Inc. to Logan-Laws Financial Corporation ("Logan-Laws"). (Sec'y Stat., ¶ 4, Ex. A, pp. 1-2.) Logan-Laws defaulted as an issuer of Mortgage Backed Securities ("MBS") due to its failure to comply with the Government National Mortgage Association's ("GNMA") MBS program requirements. (Sec'y Stat., ¶ 5, Ex. B, Declaration of Christopher C. Haspel, Director, MBS Monitoring Division of the GNMA, HUD ("Haspel Decl."), dated March 9, 2011, ¶ 4.) Upon default by Logan-Laws, all of its rights, title and interest in Petitioner's loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Logan-Laws and GNMA. (Sec'y Stat., ¶ 6; Haspel Decl., ¶ 4.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec'y Stat., ¶ 7; Haspel Decl., ¶ 5.)

Petitioner is currently in default on the Note. (Sec'y Stat., ¶ 8.) The Secretary has made efforts to collect from Petitioner but has been unsuccessful. (*Id.*) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD in the following amounts:

- (a) \$13,202.82 as the unpaid principal balance;
- (b) \$1,501.11 as the unpaid interest on the principal balance at 13% per annum through March 4, 2011; and
- (c) interest on said principal balance from March 5, 2011 until paid.

(Sec'y Stat., ¶ 8; Haspel Decl., ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated January 17, 2011 was sent to Petitioner. (Sec'y Stat., ¶ 9; 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, but has not agreed to enter into one. (Sec'y Stat., ¶ 10; Haspel Decl., ¶ 7.) The Secretary's proposed repayment schedule is 10% of Petitioner's disposable pay. (Sec'y Stat., ¶ 13; 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 due to operation of law. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner argues that the subject debt is not enforceable against her because (1) a divorce decree assigned the debt to her ex-husband; and (2) the administrative wage garnishment would cause a financial hardship for

Petitioner. (Petitioner's Request for a Hearing ("Pet'r Hr'g Req."), filed February 7, 2011; Petitioner's Documentary Evidence ("Pet'r Evid."), filed April 13, 2011.).¹

First, Petitioner claims that her former spouse assumed all liability for the subject debt due to "a court order of legal separation making Mr[.] Baldwin (Petitioner's ex-husband) 100% responsible for the debt of the residence that he lives in;" Petitioner "ha[s] not lived in said residence since 11-10-1998." (Pet'r Evid.) As support, Petitioner filed a copy of Consent Order, dated September 13, 1999, and Divorce Settlement, dated August 20, 2001. (Pet'r Hr'g Req., Attach.; Pet'r Evid.) As one of the signatories on the Note, however, Petitioner is jointly and severally liable along with the other signatory, Petitioner's former spouse, for repayment of the debt. "Liability is characterized as joint and several when creditors may sue the parties to an obligation separately or together." *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005) (citing *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314 (July 15, 1987)).

Moreover, even if the terms of a court order allocate half of the responsibility for the alleged indebtedness to Petitioner's ex-husband, "Petitioner remains liable to HUD for payment of the Note pursuant to the terms of the Note and existing law." *Terri Kutz*, HUDOA No. 09-M-NY-KK08 (March 20, 2008). The terms of the divorce only determine the rights and liabilities between Petitioner and her ex-husband, and do not bind their creditors. See *Pee Dee State Bank v. Prosser*, 367 S.E.2d 708, 712 (S.C. App. 1988) (overruled in part on other grounds); *Kimberly S. King (Theide)*, HUDBCA No. 89-4587-L74 (April 23, 1990); see also *Cynthia Abernethy*, HUDBCA No. 04-D-NY-AWG39 (March 23, 2005). The Secretary may proceed against any signatory for the full amount of the debt. *Terri Kutz*, HUDOA No. 09-M-NY-KK08 (March 20, 2008.) Although Petitioner may be able to seek indemnification from other signatories on the Note, this does not prevent HUD from seeking payment solely against Petitioner. *Id.* Therefore, I find that Petitioner is jointly and severally liable to HUD for the full amount of the alleged debt.

Second, Petitioner argues that the administrative wage garnishment would cause a financial hardship. Petitioner states, "My wages being garnished would make it a financial hardship for me to be able to support myself and my family at the present time." (Pet'r Evid.) As support, Petitioner filed a copy of a bi-weekly pay statement, bills and statements.

According to Petitioner's bi-weekly pay statement for the pay period ending April 1, 2011, her bi-weekly gross pay was \$1,185.03, making her monthly gross pay \$2,370.06. (Pet'r Evid.) 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...[including] amounts for deductions such as social security taxes and withholding taxes..." 31 C.F.R. § 285.11(c), (i)(2)(i)(A). After subtracting allowable deductions for federal tax, \$236.76; Social Security, \$94.18; Medicare, \$32.52; and health insurance, \$91.74, Petitioner is left with a monthly disposable pay of \$1,914.86. (Pet'r Evid.)

¹ Although the Secretary named Karen Baldwin as the debt holder and Petitioner signed her Request for a Hearing and Documentary Evidence as Karen Brown, Petitioner has nonetheless acknowledged the debt and only argues that her ex-husband, Ronald Craig Baldwin, is responsible for paying the subject under their divorce decree.

The documentary evidence submitted by Petitioner shows records of payment for the following essential household expenses for which this Office will credit Petitioner: housing, \$821.34; electricity, \$144.93; water, \$32.05; and car insurance; \$175.10. Petitioner also submitted a mobile phone bill totaling \$239.45 for Petitioner and three others. Petitioner's alleged telephone expense is deemed excessive, and, therefore, only a portion, \$152.07, will be credited towards Petitioner's essential monthly household expenses. Petitioner also submitted medical bills totaling \$963.99. Since Petitioner has not submitted sufficient documentary evidence to establish the necessity of this expense being treated as a recurring monthly expense, a monthly average of \$80.33 will be credited towards Petitioner's essential monthly household expenses. Petitioner also submitted a DirecTV statement for \$90.96; the cable television expense is not credited towards Petitioner's essential monthly expenses because it is not considered an essential living expense.

Petitioner failed to file documentary evidence to support her claimed expenses of food, \$800.00; gas, \$400.00; and life insurance, \$75.00. This Office, however, has determined that credit may be given for certain essential household expenses, such as rent and food, where Petitioner has not provided bills or other documentation, yet the "financial information submitted by Petitioner...[was found to be] generally credible..." *David Herring*, HUDOA No. 07-H-NY-AWG53 (July 28, 2008) (citing *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). On the other hand, certain expenses are not deemed by this Office to be necessary living expenses and thus require documentary evidence to support these claims. *Brenda Husband*, HUDOA No. 07-L-CH-AWG31 (February 14, 2008). In accordance with the *Herring* and *Loera* holdings, Petitioner's alleged monthly expense for food only, \$800, will be credited towards her essential monthly household expenses. Thus, Petitioner's essential household expenses total \$2,125.49 monthly.

This Office ordered Petitioner to submit proof of payment of household expenses to prove financial hardship, including "proof of dependents residing in Petitioner's household and additional pay statements or other proof of all income for all wage-earners . . ." (Notice of Docketing, Order, and Stay of Referral, dated February 11, 2011) (emphasis added). Although Petitioner's pay statement states she is legally single, her documentary evidence, including a health insurance certificate and several bills, suggests she resides with a Ron Jeffrey Eckert in her household. As Petitioner has not submitted evidence of Mr. Eckert's income, this Office finds it reasonable to attribute one half of the household expenses to Mr. Eckert. Nevertheless, this Office will credit Petitioner with the full expense of her medical bills. Therefore, I find that Petitioner is responsible for \$1, 143.08 essential household expenses.

Petitioner's monthly disposable income of \$1,914.86 less her monthly essential household expenses of \$1,143.08 leaves Petitioner with a balance of \$771.79. A 10% garnishment rate of Petitioner's disposable income, as proposed by the Secretary (Sec'y Stat., ¶ 13; Haspel Decl., ¶ 8), would equal \$191.49 per month and leave Petitioner with a balance of \$580.30. The balance would still enable Petitioner to meet her essential household expenses.

Pursuant to 31 C.F.R. § 285.11(k)(3), this Office has the authority to order garnishment at a lesser rate based upon the record before it, particularly in cases where financial hardship is found. Upon consideration, I find that Petitioner has not submitted sufficient documentary

evidence to substantiate her claim that the administrative wage garnishment in the amount sought by the Secretary would cause a financial hardship. Therefore, I find that an order for administrative wage garnishment of Petitioner's disposable income at a rate of 10% would not create a financial hardship for Petitioner within the meaning of 31 C.F.R. § 285.11(f)(8)(ii).

In conclusion, I find that Petitioner has not met her burden of proof to prove that no debt exists, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause a financial hardship. Therefore, I find that the debt in this case is past due and enforceable in the amount alleged by the Secretary.

Finally, should Petitioner seek to negotiate repayment terms with HUD, Petitioner is advised that this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. However, Petitioner may discuss this matter with Counsel for the Secretary or Mr. Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142) to her local HUD office.

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**. Therefore, it is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.



H. Alexander Manuel
Administrative Judge

May 23, 2011