



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

In the Matter of:

SAMANTHA JUREK AND EDWARD JUREK,

Petitioners.

HUDOA Nos. 11-M-NY-AWG91
11-M-NY-AWG92

Claim No. 721006689

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Pro se

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For the Secretary

DECISION AND ORDER

On April 29, 2011, this Office received Petitioners' request for a hearing concerning the proposed administrative wage garnishments of their 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 utilize 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 the alleged debt in this case 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). Petitioners 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, Petitioners may

present evidence that the terms of any proposed repayment schedule are unlawful, would cause an undue financial hardship to Petitioners, 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 Office stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral, 2.)

Background

On September 1, 2002, a HUD-insured loan on Petitioners' home (the primary note) was in default, and Petitioners faced foreclosure. (Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable and Secretary's Proposed Repayment Schedule ("Sec'y Stat."), ¶ 2.) To prevent the lender from foreclosing, HUD advanced funds to Petitioners' lender to bring the primary note current. (*Id.* at ¶ 3.) In exchange for foreclosure relief, on September 1, 2002, Petitioners executed a Subordinate Note in the amount of \$5,614.25 in favor of the Secretary. (*Id.* at ¶ 4; Sec'y Ex. B, Subordinate Note.) Paragraph 4(A) of the Subordinate Note cites specific events that make the debt become due and payable. (Sec'y Stat., ¶ 5.) One of these events is the payment in full of the primary note. (*Id.*; Sec'y Ex. B, at ¶ 4(A)(i) and (iii).)

On or about March 18, 2010, the FHA insurance on Petitioners' primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. (Sec'y Stat., at ¶ 6.) Upon payment in full of the primary note, Petitioners were to make payment to "the U.S. Department of HUD c/o First Madison Services, Inc., 4 Corporate Drive, Shelton, CT 06484 or any such other place as Lender may designate in writing by notice to Borrower." (*Id.* at 7; Sec'y Ex. B, at ¶ 4(B).)

Petitioners failed to make payment on the Subordinate Note at the place and in the amount specified by the Subordinate Note. (Sec'y Stat., ¶ 8.) The Secretary has made efforts to collect this debt in full from Petitioners, but has been unsuccessful. (*Id.* at ¶ 9; Sec'y, Ex. A, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), at ¶ 5.) The Secretary has filed a statement alleging that Petitioners' debt to HUD is delinquent and Petitioners remain justly indebted to the Secretary in the following amounts:

- (a) \$1,942.21 as the unpaid principal balance as of May 31, 2011;
- (b) \$1.62 as the unpaid interest on the principal balance at 1% per annum through May 31, 2011; and
- (c) interest on said principal balance from June 1, 2011 at 1% per annum until paid..

(*Id.* at ¶¶ 8 and 9; Sec'y Ex. A, ¶ 5.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated March 11, 2011, was sent to Petitioners. (Sec'y Stat. ¶ 11; Ex. A, ¶ 6.) In accordance with 31 C.F.R. 285.11(e)(2)(ii), Petitioners were afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. (Sec'y

Stat. ¶ 11; Sec’y Ex. A, ¶ 7.) As of June 3, 2011, neither Petitioner has entered into a written repayment agreement. (*Id.*)

Wage Garnishment Orders were issued to each Petitioner’s employer. (Sec’y Stat., ¶ 12.) Pursuant to the Wage Garnishment Order issued to Edward Jurek’s employer, his pay was garnished on May 4, 2011 in the amount of \$84.82; May 11, 2011 in the amount of \$116.62; and May 17, 2011 in the amount of \$94.15. (*Id.* at ¶13; Dillon Decl., at ¶ 9.) These payments are reflected in the outstanding balance sought by HUD above. (Sec’y Stat., ¶ 13.) A garnishment on May 24, 2011 in the amount of \$232.85 has not yet been received by HUD, and is not reflected in the outstanding balance as of June 7, 2011. (*Id.*) Pursuant to the Wage Garnishment Order issued to Samantha Jurek’s employer, her pay was garnished on June 1, 2011. (*Id.* at 14.) This payment has not yet been received by HUD and is not reflected in the outstanding balance as of June 7, 2011. (*Id.*)

The Secretary’s attempt to obtain copies of Petitioners’ current pay statements was unsuccessful. (*Id.* at ¶ 25.) Therefore, the Secretary’s proposed repayment schedule is \$155.67 per month, which will liquidate the debt in approximately three years, or 15% of each Petitioner’s disposable pay. (*Id.*)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioners bear the burden of proving, by a preponderance of the evidence, that no debt exists or that the amount of the alleged debt is incorrect. Petitioners may also present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to Petitioners, or that collection of the debt may not be pursued due to operation of law. 31 C.F.R. § 285.11(f)(8)(ii).

Petitioners dispute the existence of the debt but do not raise any claim of financial hardship. Specifically, Petitioners claim “[i]n 2002 this debt was to be paid after the original 30 yr term expired. In 2003 when we filed for bankruptcy this HUD loan was included even as a secured loan.” (Pet’rs Hr’g Req.) In support of their argument, Petitioners filed a copy of their Schedule D – Creditors Holding Secured Claims from the United States Bankruptcy Court, Western District of New York (“Schedule D”). (Pet’rs Hr’g Req., attachment.) The Schedule D lists the Secretary as a creditor and the Subordinate Note as a claim. (*Id.*) Petitioners also included a Summary of Trustee’s Final Account indicating that Petitioners’ bankruptcy plan was completed on or around September 2, 2008, where a total of \$19, 825.42 was distributed to various creditors under the plan. (*Id.*)

Petitioners also claim that when they refinanced, Embrace Loans indicated the Subordinate Note had been “PAID in FULL and the loan was taken off the Property Title during the refinanced Embrace Loan....” (Pet’rs Hr’g Req.) Petitioners claim that Embrace Loans used the same documents filed with this Office to determine that the Subordinate Note had been satisfied via their concluded bankruptcy. (*Id.*)

In response to Petitioners’ arguments, the Secretary asserts that “[w]hile Petitioners are correct that HUD is named as a creditor in the bankruptcy case, HUD’s debt was classified by

the trustee as 'Direct Pay'" and that "[t]he 'Direct Pay' classification is typically given to certain secured and unsecured long-term debts that have payment due dates that fall beyond the final payment due under the bankruptcy plan." (Sec'y Stat., ¶¶ 20-21.) The Secretary adds that Petitioners' debt to HUD did not become due or payable until March 18, 2010, which was after the completion of Petitioners' bankruptcy plan. (*Id.* at ¶¶ 18-19.) In support of his argument, the Secretary filed a Final Report and Account issued by the United States Bankruptcy Court, Western District of New York indicating that under the bankruptcy plan, monies were not paid to the Secretary to satisfy Petitioners' debt in this case, and that the debt in this case was classified as "direct pay." (Dillon Decl., Ex. B, Final Report and Account.)

After a review of the evidence filed by the parties, this Office finds that Petitioners' evidence only establishes that the debt in this case was listed as a debt owed by Petitioners throughout bankruptcy proceedings and the evidence does not prove that the debt was actually satisfied or discharged. Additionally, the Secretary has produced evidence that specifically states the amount paid for this debt was \$0.00 for the principal and \$0.00 for the interest. (Dillon Decl., Ex. B, Final Report and Account.)

With respect to Petitioners' argument that Embrace Loans "clear[ed] the HUD loan as PAID in FULL and the loan was taken off of the [p]roperty [t]itle during the refinanced Embrace Loan..." (Pet'rs Hr'g Req.), this Office notes that HUD is not bound by the determination of another lender as to whether a debt to HUD is owed, unless HUD specifically acquiesces to that determination. This Office has consistently held that "there must be either a release in writing from [HUD] specifically discharging [the debt in this case], or valuable consideration accepted by [HUD] from Petitioner[s], which would indicate an intent to release." *Hedieh Rezai*, HUDCA No. 04-A-NY-EE016, at 4 (May 10, 2004). In this case, Petitioners offered to produce "documentations [sic] of the Embrace Loan" in support of their claim but did not do so. (Pet'rs Hr'g Req.) Unless these documents contained a release in writing from HUD or proof of payments made to HUD by Petitioners, this Office finds that the alleged documentation from Embrace Loan is inconsequential. Accordingly, this Office finds that Petitioners have failed to produce evidence to support their claim that the debt in this case does not exist and that Petitioners are indebted to HUD 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 to the extent authorized by law.

H. Alexander Manuel

H. Alexander Manuel
Administrative Judge

September 29, 2011