

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS
Washington, D.C.

In the Matter of:

Jannett Lane,

Petitioner.

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Judge H. Alexander Manuel

HUDOHA No. 22-AM-0027-AG-0023

Claim No. 0847830

July 31, 2023

DECISION AND ORDER

On November 16, 2021, Jannett Lane, (“Petitioner”) filed a Request for Hearing (“*Request*”) concerning the amount, enforceability, or payment schedule of 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 garnishments as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the administrative judges of this Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

As a preliminary matter, the Secretary has filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable and Secretary’s Proposed Repayment Schedule*, dated December 8, 2021, (“*Sec’y. Stat.*”) attaching the *Declaration of Sharon Wandrick*, (“*Wandrick Decl.*”), Supervisor, Monitoring and Surveillance Division, Government National Mortgage Association (“Ginnie Mae”) of HUD, dated December 1, 2021, as Exhibit A thereto. Upon consideration, the Court finds that the *Sec’y. Stat.*, together with the documentary evidence attached thereto constitutes *prima facie* evidence that the alleged debt in this case is due and owing by Petitioner.

In her *Request*, Petitioner claims that the proposed garnishment would cause financial hardship. However, Petition fails to submit evidence with her *Request* to support her position. The Court finds that Petitioner has failed to file any substantive evidence that the alleged debt in this case is not owed or is not legally enforceable. The Court further finds that Petitioner has failed to provide proof of payment of necessary household expenses sufficient to demonstrate that imposition of a repayment schedule at this time would create undue financial hardship for Petitioner.

BACKGROUND

On January 24, 1996, Petitioner signed a *Retail Installment Contract-Security Agreement* (“*Note*”) with Oakwood Mobile Homes, Inc. for the purchase of a home. *Sec’y. Stat.* at ¶ 2, *Sec’y. Stat.* Exhibit B. The *Note* was insured against nonpayment by the Secretary pursuant to the National Housing Act, 12 U.S.C. § 3720D. *Sec’y. Stat.* at ¶ 2. The *Note* was assigned to Oakwood Acceptance Corporation (“Oakwood”). *Id.* at ¶ 3, Exhibit A - *Declaration of Sharon Wandrick* (“*Wandrick Decl.*”) at ¶ 3. Ginnie Mae subsequently defaulted Oakwood as an issuer of mortgage backed securities and subsumed Oakwood’s rights and interests in the *Note*. *Sec’y. Stat.* at ¶ 4, *Wandrick Decl.* at ¶ 4.

The Secretary maintains that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$22,395.31 as the unpaid principal balance as of August 30, 2020;
- (b) \$28,009.59 as the unpaid interest on the principal balance at 2% per annum through December 1, 2021; and
- (c) 2% interest on said principal balance until paid.

Sec’y. Stat. at ¶ 7, *Wandrick Decl.* at ¶ 6.

A *Notice of Intent to Initiate Administrative Wage Garnishment Proceedings* (“*Notice*”) dated September 15, 2021, was sent to Petitioner. *Sec’y. Stat.* at ¶ 8, *Wandrick Decl.* at ¶ 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 with HUD under mutually agreeable terms. *Sec’y. Stat.* at ¶ 9, *Wandrick Decl.* at ¶ 7. Petitioner did not enter into a written repayment agreement in response to the *Notice*. *Sec’y. Stat.* at ¶ 9, *Wandrick Decl.* at ¶ 8. In response to the *Notice*, Petitioner claims that the proposed garnishment would cause financial hardship.

Petitioner’s obligation to repay the *Note* derives from the terms of the *Note* itself. The express language of the *Note*, signed and agreed to by Petitioner, states under “TYPE OF LOAN” that “Purchaser ***promises to pay*** Seller the Unpaid Balance shown as Number 6 in the Itemization of Amount Financed section of this Contract with interest at the rate of 10.500% per year ***until the debt is fully paid.***” *Note* at ¶ 2 (emphasis added). Further, the express language of the *Note* states that the “FINANCE CHARGE” is \$39,447.80, the “Amount Financed” is \$28,256.20, and the “Total of Payments” is \$67,704.00. Lastly, “SELLER” assigned the *Note* “under terms of assignment on the reverse side hereof” to Oakwood. *Note* above Seller’s signature and on reverse side at “SELLER’S ASSIGNMENT.”

Petitioner provides no proof to offset the Secretary’s evidence that Petitioner is under an obligation to repay the debt to the Secretary. Indeed, Petitioner does not appear to contest the debt. Instead, Petitioner claims that the proposed garnishment would cause financial hardship. *See Request* at “Garnishment amount....”

A debtor requesting a review for financial hardship “shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation.” *See* § 285.11(k)(1). More specifically, the *Request* instructs Petitioner to “provide a signed financial statement along with copies of earnings and income

records and proof of expenses.” *See Request* at “Garnishment amount....” In addition, on November 19, 2021, this Court ordered Petitioner to file documentary evidence that the terms of the Secretary’s repayment schedule would cause a financial hardship to Petitioner by January 3, 2022.

To date, Petitioner provides no documentary evidence to support her claim of financial hardship despite this Court’s order. Petitioner’s failure to do so may result in dismissal of her *Request*. *See* 24 C.F.R. § 26.4(d). Therefore, in the absence of a release from HUD discharging Petitioner from the obligation to repay the debt, Petitioner remains indebted to the Secretary in the amounts set forth above. *See In re Juanita Mason*, HUDOA No. 08-H-NY-AWG70, at p. 3 (December 8, 2008) (“... [F]or Petitioner not to be held liable for the debt, there must either be a release in writing from the lender... or valuable consideration accepted by the lender from Petitioner....”) (citations omitted).

Therefore, the Court finds Petitioner liable for the debt in this case in the amounts claimed by the Secretary.

Should Petitioner wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. If Petitioner wishes to discuss a payment plan, Petitioner may discuss the matter with Michael DeMarco the Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859 or write to HUD Financial Operation Center, 50 Corporate Circle, Albany, NY 12203-5121. Petitioner is also entitled to seek reassessment of this financial hardship determination in the future in the event that she experiences materially-changed financial circumstances. *See* 31 C.F.R. § 285.11(k).

ORDER

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 for each pay period. It is

FURTHER ORDERED that the *Stay of Referral* previously entered in this case is hereby VACATED.

SO ORDERED,



H. Alexander Manuel
Administrative Judge

APPEAL NOTICE: You have the right to move for reconsideration of this case before the HUD Office of Hearings and Appeals within 20 days of the date of this ruling or decision; or, thereafter, to reopen this case. Ordinarily, such motions will not be granted absent a demonstration by the movant that there is substantial new evidence to be presented that could not have been presented previously. An appeal may also be taken of this decision to the appropriate United States District Court. For wage garnishments cases, See 24 C.F.R. § 17.81, 31 C.F.R. § 285.119f), and 5 U.S.C. 701, et seq. For administrative offset cases, See 24 C.F.R. § 17.73(a), and 5 U.S.C. § 701, et seq.