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

In the Matter of:	:	
	:	HUDOA No. 09-H-CH-AWG12
	:	Claim No. 7709731770B
Monica Halley aka Monica Durkin,	:	
	:	
Petitioner	:	
	:	

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For Petitioner

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For the Secretary

DECISION AND ORDER

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 Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R § 17.170(b).

The administrative judges of this Office have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment when the debt is contested by a debtor. 24 C.F.R. § 17.170(b). 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 proposed repayment schedule are unlawful, would cause an undue financial hardship to the 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) and (10)(i), on November 18, 2008, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, if one had not previously been issued. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated November 11, 2008.)

Background

On December 15, 1995, Petitioner and Timothy Durkin executed and delivered to Pacific Northwest Funding Group, Inc. an installment note and addendum thereto ("Note") dated December 6, 1995 in the amount of $17,000 for a property improvement loan. (Secretary's Statement ("Sec'y. Stat."), filed January 7, 2009, ¶ 2.) The Note was insured against nonpayment by the Secretary pursuant to Title 1 of the National Housing Act, 12 U.S.C. § 1703. (Sec'y. Stat., ¶ 2.) Petitioner and Timothy Durkin also signed a Deed of Trust, dated December 6, 1995 to secure such Note on December 14, 1995. Thereafter, Northwest Funding Group, Inc. assigned the Note and Deed of Trust to Mego Mortgage Corporation, who subsequently assigned both documents to First Trust of New York, N.A. as trustee. (Sec'y. Stat., ¶ 2.) After default by Petitioner, the Note and Deed of Trust were assigned to the Secretary. (Sec'y. Stat., ¶ 3; Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, Financial Operations Center of HUD ("Porter Decl."), dated January 2, 2009, ¶ 3.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent"), dated October 21, 2008 was sent to Petitioner. (Sec'y. Stat., ¶ 6; Porter Decl., ¶ 5.) In response to this Notice of Intent, Petitioner requested a hearing and stated that her signature was forged on the loan. (Sec'y. Stat., ¶ 7.) On January 2, 2009, Petitioner filed an Opposition to Notice of Intent to Initiate Wage Garnishment Proceedings ("Opp. to Notice," dated January 12, 2009), which was subsequently amended on March 31, 2009. ("Supp. to Opposition"), dated January 22, 2009. Thereafter, the Secretary filed its Response to Opposition to Notice of Intent to Initiate Wage Garnishment Proceedings ("Response to Opposition"), dated February 20, 2009.

The Secretary has filed a Statement, with documentary evidence, in support of his position that Petitioner is currently in default on the Note and that Petitioner is indebted to HUD in the following amounts:

(a) $ 16,945.25 as the unpaid principal balance as of December 31, 2008;

(b) $11,086.84 as the unpaid interest on the principal balance at 5% per annum through December 31, 2008; and

(c) interest on said principal balance from January 2, 2009 at 5% per annum until paid.

(Sec'y. Stat., ¶ 5; Porter Decl., ¶ 4.)

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. (Porter Decl., ¶ 6.) To date, Petitioner has not entered into a written repayment agreement. (*Id.*) The Secretary's proposed repayment schedule is $457.22 per month, or 15% of Petitioner's disposable pay. (Porter Decl., ¶ 7.)

Discussion

Petitioner challenges the existence of the debt on the grounds that: 1) her signature is forged on the Note and the Deed of Trust; 2) her spouse, and not Petitioner, is responsible for the debt because she is separated, and in the process of divorcing, her spouse; 3) the notary public fraudulently certified the loan documents at issue; and, 4) even if the alleged debt is legitimate, it is barred by the Statute of Limitations. Pursuant to 31 C.F.R. § 285.11(f) (8) (ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that the debt is unenforceable because the debt does not exists or the amount of the alleged debt is incorrect.

First, Petitioner contends that her signature is forged on the Note and the Deed of Trust. Petitioner states: "I did not take out a loan with Timothy P. Durkin. The signature is not mine, it was forged!..." (Petitioner's Request for Hearing, ("Pet'r. Hrg. Req.") dated November 3, 2008.) Petitioner further states "she did not acknowledge any such loan, and that if such alleged loan was made by HUD, it was made to persons other than Petitioner and based on a fraudulent signature purporting to be that of Petitioner Monica Hally (aka Durkin)." (Petitioner's Oppo. To Notice of Intent to Initiate Wage Garnishment Proceedings, ("Pet'r. Oppo. to Notice"), dated January 12, 2009, ¶¶ 13-17.)

As evidence, Petitioner offered a document she identified as bearing an authentic version of her signature. She also offered copies of various other documents that bore her signature, but Petitioner claimed her signature on those documents was forged. (Pet'r. Hrg. Req., Attachements; Pet'r. Oppo. to Notice, Attachments.) Petitioner also submitted the Declaration of Norma Scalise, along with her Statement of Qualifications, both of which were offered to qualify Ms. Scalise as an expert. (Pet'r. Oppo. to Notice, Attachment A.) Upon examination of the documents provided by Petitioner, the representation made by Petitioner's handwriting expert, was: "it is my opinion that the signatures in question are not that of Monica Durkin." (Id., ¶ 8.)

Petitioner also submitted a copy of the Police Report she filed with the local police department alleging that her signature had been forged on the loan documents. (Pet'r. Opp. to Notice, Attachment B.) The police report, dated November 24, 2008, indicated that Petitioner "showed me each signature and initial mark on each of the loan documents and told me each of the signatures above her typed name were forged." (Pet'r. Opp. to Notice, Attached Report.) According to the report, the police officer further indicated that "Petitioner showed me several different handwriting exemplars with her genuine signature, and the two signatures did not match." (Id.)

The Secretary argues, on the other hand, that the handwriting analysis expert offered by Petitioner lacks the basic qualifications recognized by her industry as necessary for competence and recognition by the courts. (Secretary's Response to Opposition to Notice of Intent to Initiate Wage Garnishment Proceedings ("Sec'y. Resp. to Oppo."), dated April 2, 2009, ¶16.) The Secretary challenges the credibility of Petitioner's expert witness by stating that "Petitioner's expert claims to be a candidate for certification by the National Association of Document Examiners," but, the organization in fact indicates that "Ms. Scalise is in fact not regarded as a candidate for certification because she failed to complete the oral or court requirements within five years of taking the written exam." (Id., ¶17.) The Secretary also states "there are two bodies that are accredited and recognized by the Forensic Specialties Accreditation Board, Inc. (FSAB) to carry out the certification of forensic document examiners: The American Board of Forensic Document Examiners, Inc. (ABFDE) and The Board of Forensic Document Examiners. Ms. Scalise's List of Qualification does not reflect that she is certified by either of these organizations." (Id., ¶18.) The Secretary claims that Petitioner's expert "does not possess even the minimum training deemed necessary in the profession. The ASTM Standard E2388-05 requires apprenticeship training with a 'minimum of 24 months full-time training under the supervision of a principal trainer.'" Finally, with regard to the police report offered by Petitioner, the Secretary claims that Petitioner "only filed the Police Report after receiving the Notice of Intent to Initiate Wage Garnishments" and further claims, "as stated in [the] police report, [Petitioner] only contacted the police department because the attorney she retained to defend this matter advised her to do so." (Sec'y. Resp. to Opp., ¶13.)

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), the burden of proof is on the Petitioner to prove, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect, or, to prove that collection of the debt may not be pursued due to operation of law. In a forgery case like the case at hand, this Office must determine whether the evidence submitted by Petitioner is sufficient to meet Petitioner's burden of proof that the signature is forged or unauthorized. Administrative judges are not handwriting experts, and thus, must depend on the scientific testimony of experts in order to find that a forgery has occurred. *See In the Matter of Lawrence Syrovatka,* HUDOA No. 07-A-CH-HH10 (November 18, 2008). To do so, this Office must determine the following in the instant case: (1) whether Ms. Scalise qualifies as an expert; and if so, (2) whether her opinion is admissible. While the Federal Rules of Evidence are usually not binding in an administrative proceeding, the court can rely upon the guidance provided by the Rules of Evidence ("Fed. R. Evid."). (*See* 24 C.F.R. § 26.24.) As such, in this case, the Court will rely upon the Federal Rules of Evidence for guidance to determine whether Ms. Scalise qualifies as an expert, and if so whether her opinion is admissible.

Under Fed. R. Evid. 702 , "if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if: (1) the testimony is based upon sufficient facts or date,

(2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliable to the facts of this case.

First, "expert status may be based on knowledge, skill, experience, training, or education." *United States vs. Frazier*, 387 F.3d 1244, 1261(11 Cir. 2004) (referencing *Fed. R. Evid.* 702) Here, Petitioner has established that her handwriting expert, Ms. Scalise, has attended several educational conferences related to document examination and handwriting analysis. Ms. Scalise even lists herself as a member of the *Forensic Expert Witness Association.* (Pet'r. Opp. to Notice, Attachment A.) Yet, it is not evident from the record that Petitioner's expert has been certified, or made eligible for certification, by the American Board of Forensic Document Examiners, or other known accreditation boards that set the standard for this industry.

Upon further review of the record, Petitioner has not provided evidence that proves that Ms. Scalise has undergone any formal training, or had any professional experience in questioned document examination, particularly in the court room or otherwise. *See Arizona vs. Livanos*, 725 P.2d 505 (1986)(citing *People v. Tidwell*, 706, P.2d 438, 439 (Colo.App.1985) (court held that trial court had not abused its discretion in refusing to allow the proffered defense witness to testify as a handwriting expert. Witness had knowledge of graphanalysis, had some experience in questioned document examination, but was not certified by the American Board of Document Examiners, and had never been qualified as an expert witness.); *see also In the Matter of Shirley Thomson,* HUDDOA No. 09-M-NY-KK07 (April 16, 2009) (Petitioner met the burden of proving that the subject debt was unenforceable, in part, by submitting a handwriting analysis conducted by Steven G. Drexel, a forensic document and handwriting examiner who was a member of the American Board of Forensic Documents Examiners and qualified as a known expert witness in federal criminal court and four other courts.) Based on the foregoing, I find that Petitioner has failed to provide sufficient evidence to establish, by a preponderance of the evidence, that Ms. Scalise is qualified according to the standards set within the industry, and as such is not qualified to offer an expert opinion regarding the authenticity of Petitioner's signatures.

Likewise, a review of the police report offered by Petitioner also indicates that it fails to establish the police officer as a qualified expert capable offering an opinion as to the authenticity of Petitioner's signature on the Note. Petitioner has also failed to present evidence that proves the police officer possesses specific training, knowledge, and expertise in the field of handwriting analysis to make a finding that is credible and reliable to offer an opinion as an expert. As a result, Petitioner has failed to rebut the presumption of authenticity of her signature on the Note in question.

While the Secretary has submitted that no conclusion could be reached regarding whether the questioned signatures were or were not prepared by Petitioner, the burden to rebut the presumption of authenticity of questioned signatures is on the Petitioner, and the Petitioner, in this case, failed to meet that burden. Accordingly, Petitioner's allegations of forgery must fail

for lack of proof, and as such, Petitioner remains legally obligated by the terms of the Note bearing her signature. *In the Matter of Juan Velazquez,* HUDBCA No. 02-C-CH-CC049 (September 25, 2003)(citing *Elizabeth Argon*, HUDBCA No. 97-C-SE-W231 (October 28, 1997).

Additionally, even if this Court determined that Petitioner had established that her signature was forged, a review of the record shows that Petitioner ratified the subject loan. Cal. Civ. Code § 1646 (2010) provides that a contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made. Petitioner's Note and Deed of Trust were executed in California. Thus, according to Cal. Com. Code § 3403(a)(2009) "an unauthorized signature may be ratified..."

Ratification is defined as "a retroactive adoption of the unauthorized signature by the person whose name is signed and may be found from conduct as well as from express statements." *See* Official Comment 3, to Uniform Commercial Code § 3-403. For example, ratification may be found "from the retention of benefits received in the transaction with knowledge of the unauthorized signature." (*Id.*) Ratification also has been defined as "a voluntary act which was purportedly done on Petitioner's behalf by another person, the effect of which is to treat the act as if originally authorized by him." *In the Matter of Shirley Thomson,* HUDOA No. 09-M-NY-KK07, dated April 16, 2009.

The record shows that, subsequent to signing the Note, Petitioner "resided with her husband at the time the loan was made and did not dispute that she was co-owner of 1306 Rosalie Court, Redlands, California, when the September 6, 1995 Deed of Trust which secured the Title I loan was executed." (Supplemental Declaration of Brian Dillon ("Supp. Decl. of Brian Dillon), dated February 17, 2009, ¶ 4). Upon further examination of the Note bearing Petitioner's signature, it indicates on the face of the Note that January 4, 1996, was the "Date Funds Disbursed to Borrower(s)." (Sec'y. Stat., Ex. A., Attached Note, p.1.) There is no indication from the record that Petitioner has produced any evidence that the loan proceeds that were disbursed on that date were for the benefit of anyone other than her and her husband, or further, that she had not authorized her husband to act on her behalf. Instead, Petitioner stated, in her own words in a letter she admitted bore her authentic signature, "I, Monica Durkin, am not responsible for any debts incurred by Timothy Durkin as of January 29, 1996. We are in the final stages of our of [sic] divorce and were separated in January. Any purchases made by Timothy after that date are his responsibility..." (Pet'r. Hrg. Req., Attached Letter, dated December 5, 1996.) Also, in the December 5, 1996 letter, Petitioner reinforces, in reference to the signature on the letter, the "Copy of Monica Durkin Signature to disprove signature on loan document." (Id.) The debt which is the subject of this proceeding was incurred on December 6, 1995, which obviously precedes the date Petitioner claimed she would no longer be responsible for the debt, that of January 29, 1996. (Id.; Sec'y. Stat. Ex. A. Attached Note.)

In the case of *In the Matter of Lani B. Park,* HUDBCA 99-A-CH-Y302 (May, 2000), the Petitioner argued that the loan proceeds were not used for their intended purpose, but nonetheless, the administrative judge in that case concluded that the evidence presented indicated the Petitioner received the benefits of the loan. Similarly, in this case, the record indicates Petitioner had paid, or at least was attempting to make good faith payments on the Note for a period of time, after which Petitioner informed Mego Mortgage that her and her ex-husband were no longer going to make payments. (Suppl. Decl. of Brian Dillon, ¶, Exhibit D.) Petitioner's actions, when viewed in their totality, constitute conduct that would be considered ratification. Petitioner's awareness of the Note and Deed of Trust, as evidenced by her attempts to make payments on the Note prior to her divorce, supports a finding of ratification based upon acquiescence. *See Common Wealth Ins. Systems, Inc. v. Kersten,* 40 Cal. App. 3d. 1014, 15 Cal. Rptr. 653 (1974). Consistent with *Shirley Thomson,* I find that Petitioner's act of ratifying the Note has the effect of treating her initial signature on the Note as if the Note was originally authorized by Petitioner. Thus, Petitioner remains legally obligated to pay HUD on the Note in the amount as claimed by the Secretary.

Second, Petitioner claims that her spouse, and not Petitioner, is responsible for the debt because she is in the process of divorcing her spouse. Petitioner also claims "I, Monica Durkin, am not responsible for any debts incurred by Timothy Durkin *as of January 29, 1996.* We are in the final stages of our divorce and were separated in January. *Any purchases made by Timothy after that date are his responsibility.*" (emphasis added.) (Pet'r. Hr'g. Req., Attached Letter, dated December 5, 1996). As support, Petitioner submitted a copy of her divorce decree to establish that her divorce from her spouse was final and to prove that her spouse was solely responsible for the debt that is the subject of this proceeding.

This Office has previously held that co-signers of a loan are jointly and severally liable to the obligation, and as a result, "a creditor may sue the parties to such obligation separately or together." *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). As such, "the Secretary may proceed against any co-signer for the full amount of the debt" because each co-signer is jointly and severally liable for the obligation. *Hedieh Rezai,* HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Additionally, the Secretary's right to collect the alleged debt in this case emanates from the terms of the Note. *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). When Petitioner and her husband signed the Note, on December 6, 1995, Petitioner agreed to its terms, namely that "If more than one person signs this Note, *each of us is fully and personally obligated to pay the full amount owed* and to keep all of the promises made in this Note." (emphasis added) (Sec'y. Stat., Ex. A., Attached Note, p.2.)

For Petitioner not to be held liable for the subject debt, she must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-

NY-AA83 (October 12, 2000); *Ann Zamir* (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

In the instant case, Petitioner has failed to produce evidence of a written release from her obligation to pay the alleged debt or evidence of valuable consideration paid to HUD in satisfaction of the debt. While the Petitioner may be divorced from her ex-spouse, neither the Secretary nor the lender was a party to the divorce action. So as a recourse, Petitioner may seek to enforce, in the state or local court, the divorce decree that was granted against her ex-husband so that Petitioner may recover from her ex-spouse monies paid to HUD by her in order to satisfy this legal obligation. *See Michael York*, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3. I find, therefore, without proof of a written release, Petitioner remains legally obligated to pay the subject debt as a co-signor on the Note.

Third, Petitioner contends that the notary public fraudulently certified the loan documents at issue. (Pet'r. Hr'g. Req.; Supp. to Opposition ¶¶ 2-3.) More specifically, Petitioner contends that Terry Lynn Campbell, a Notary Public at the time the Note was signed, is no longer currently available to prove or disprove that she did in fact notarize the Petitioner's signature. (Reply to Secretary's Response to Opposition to Notice of Intent to Initiate Wage Garnishment Proceedings ("Reply to Sec'y. Resp. to Opp."), dated, April 2, 2009, ¶ 3-4.) The Secretary, on the other hand, contends that "Petitioner has presented no evidence that Terri Lynn Campbell was not a notary at the time she notarized Petitioner's signature." (Secretary's Response to Opposition to Notice of Intent to Initiate Wage Garnishment Proceedings ("Sec'y. Resp. to Oppo.," filed February 20, 2009, ¶ 11.) The Secretary further contends "the notary's signature and seal appears on the face of the document," and, "As reflected on the notary's seal, her commission was to expire October 15, 1999, and accordingly was in effect at the time that the loan documents were executed."

Under California Law, the certificate of acknowledgement is sufficient as prima facie evidence that a document has been executed by the person whose signature appears on the document. *In the Matter of Juan Velazquez,* HUDBCA No. 02-C-CH-CC049 (citing *Ryan v. Bank of Italy Nat'l Trust and Sav. Assoc.*, 289 P. 863 (Cal. Dist. Ct. App. 1930); *See also* Cal. Civ. Code 1185 (2009). The notary is required to be provided with satisfactory evidence of the identity of the person executing the document prior to notarizing the signature. Cal. Civ. Code § 1185(2009); Cal. Evid. Code. 1451 (2009). Furthermore, if a notary is negligent in the duty to properly certify documents, the documents could be considered void and the notary would be held liable. *In the Matter of Juan Velazquez* (citing *McWilliams vs. Clem*, 743 P.2d 577 (Mont. 1980).)

In the instant case, Petitioner has failed to offer any credible evidence that would prove misfeasance or malfeasance on the part of Terry Lynn Campbell while performing her duties in her capacity as a duly licensed Notary at the time the Note in question was signed. Instead, Petitioner alleges that "contact was made with the County Clerk of the County of San Bernardino who, pursuant to California Evidence Code Section 1284, responded to my request to the effect

that a diligent search had been made for the records of Ms. Terry Lynn Campbell but no evidence of Notary Journal was *currently* on file."(emphasis added.) (Amended Supplement to Opposition to Notice of Intent to Initiate Wage Garnishment Proceedings, ("Pet'r. Amend. Supp. to Oppo."), filed March 31, 2009, ¶ 3.) The Secretary has offered, however, proof that "Terri Lynn Campbell was commissioned as a notary Public in the San Bernardino California under commission #1074693 between October 16, 2005 and October 15, 1999, when that commission expired," and also the time period during which Petitioner signed the Note at issue. (Sec'y. Resp. to Oppo., Ex. A, Supplemental Declaration of Brian Dillon, Director, Asset Recovery Division, HUD's Financial Operations Division, (Supp. Dillon Decl., ¶ 5.) As such, at the time that Petitioner signed the Note in question, the Notary Public, Terry Lynn Campbell, affixed her seal and signed her signature on the face of the Note and on the assignment of the Deed of Trust from Pacific Northwest Funding Group, Inc. to Mego Mortgage Corporation. The Note in this case was executed and sealed as a certificate of acknowledgement prior to the expiration of the Notary's commission.

While Petitioner has alleged that the Notary Public is currently not on file as a Notary Public, Petitioner has failed to produce evidence to refute the Secretary's contention, and to disprove that Terry Lynn Campbell was not authorized to distribute seals at the time Petitioner signed the Note. This Office has previously held that "assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable. *Bonnie Walker,* HUDBCA No. 95-G-NY-T300 (July 3, 1996). Thus, I find Petitioner's claim that the signature on the Note and Deed of Trust was not properly notarized on December 14, 1995 fails for lack of sufficient proof.

Finally, Petitioner argues that even if the alleged debt is legitimate, it is barred by the Statute of Limitations. Petitioner more specifically states "even if the alleged debt is legitimate, it would be outlawed by the Statute of Limitations on Claims under 28 U.S.C. 2415..." (Reply to Sec'y. Resp. to Opp., ¶ 7.) Petitioner further states "The alleged debt, with the forged signature, was allegedly incurred in 1996. Petitioner therefore submits that the six (6) years statute has therefore expired, and any alleged debt would be unenforceable at this time." (Id.)

Petitioner's allegation that this claim is barred by the statute of limitations is without merit because it has long been established that there is no statute of limitations for administrative wage garnishment or administrative offset cases. *See In the Matter of Thomas A. Franzman,* HUDOA No. 09-H-CH-AWG156 (January 8, 2009). In the case of *In Re Douglas P. Hansen* (Decision Order and Reconsideration), HUDBCA No. 06-A-CH-AWG03 at 3(February 13, 2007), the Office of Appeals adopted the holding of the U.S. Supreme Court in *BP America Prod. Co v. Burton,* 127 S.Ct 638,643 (2006) and reversed its decision in the initial *Hansen* decision by finding that "no statute of limitations exists in administrative proceedings without the inclusion of a clear, legislative time period by Congress." *See BP America Prod. Co. v. Burton,* 127 S. Ct. 638 (2006); *In Re Karen T. Jackson* (Decision and Order), HUDOA No. 09-H-NY-AWG87 at 3 (June 3, 2009). Furthermore, the controlling statute in the instant case, 31 U.S.C. § 3720D, does not contain a time limitation in which the government is required to bring such administrative actions. Thus, no statute of limitations bars agency enforcement action by means of administrative wage garnishment. I find, therefore, that the Secretary is not barred from initiating wage garnishment proceedings to recover the outstanding debt despite the passage

of time to which Petitioner objects. *See In the Matter of Thomas A. Franzman,* HUDOA No. 09-H-CH-AWG156, dated January 8, 2009.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding exists and is 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 at 15% of Petitioner's disposable income.

/s/ original
Vanessa L. Hall
Administrative Judge

April 30, 2010