

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

Amanda Cornelison aka Amanda Spurlock,

Petitioner.

HUDOA No. 12-AM-CH-AG-112
Claim No. 770867718

November 29, 2012

DECISION AND ORDER

On July 24, 2012, Amanda Cornelison ("Petitioner") requested a hearing concerning a proposed administrative wage garnishment in relation 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 such action is 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. 17.81. The Secretary has the initial burden of proof to show both the existence as well as the amount of the alleged debt. 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 Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.* On August 20, 2012, 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, dated August 20, 2012.)

Background

On January 3, 1990, Petitioner executed a Manufactured Home Retail Installment Contract and Security Agreement ("Note") that, upon Petitioner's default, was later assigned to HUD. (Secretary's Statement ("Sec'y Stat.") ¶ 1, dated August 27, 2012.)

The Secretary attempted to collect on the Note from Petitioner, but has been unsuccessful. (Sec'y Stat., ¶ 2.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$2,055.15 as the unpaid principal balance as of July 31, 2012;
- (b) \$1,147.04 as the unpaid interest on the principal balance accruing at a rate of 5% per annum through July 31, 2012;
- (c) interest on said principal balance from August 1, 2012 accruing at a rate of 5% per annum until the principal balance is paid in full.

(Sec'y Stat. ¶ 3.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated July 6, 2012, was also sent to Petitioner. (Sec'y Stat. ¶ 4.) Petitioner was offered the chance to enter into a voluntary repayment agreement but has declined to do so. (Sec'y Stat. ¶ 5.)

Discussion

In her *Hearing Request* Petitioner makes several assertions. Petitioner asserts that: she does not owe the debt due to her divorce settlement; that she does not owe the full amount of the debt due to her lack of her awareness of its existence, and; that the repayment suggested by the Secretary would create a severe financial hardship. (Petitioner's Hearing Request (Pet'r's Hr'g Req."), received July 24, 2012.) Petitioner is entitled to present evidence that she is not indebted or that the debt is unenforceable pursuant to 31. C.F.R. 285.11 (f)(8)(ii). Also pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), Petitioner "may present evidence that the terms of the repayment schedule...would cause a financial hardship...."

This Court issued a *Notice of Docketing, Order, and Stay of Referral* ("Notice of Docketing") on August 20, 2012 where Petitioner was ordered to "file documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due" no later than October 4, 2012. Upon Petitioner's failure to respond, this Court issued a final order in which Petitioner was told that her response was past due. (Order for Documentary Evidence, dated October 10, 2012.) Petitioner was directed to provide documentary evidence to support her claims no later than November 7, 2012 and was warned that, "failure to comply with this Order may result in...the entry of judgment based on the documents of record." (emphasis in original) (*Id.*)

Petitioner failed to comply with both orders issued by this Court. To date, Petitioner has only furnished the Court with the assertions made in Petitioner's *Hearing Request* bereft of any documentary evidence to support them. This Office has consistently maintained that "assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable." (*Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996))). Since Petitioner, despite

repeated urging, has failed to offer any evidence that the debt alleged by the Secretary is not past due or unenforceable, Petitioner's argument fails for want of proof.

Despite this, the Secretary has filed a motion for dismissal stating that he does not seek to enforce administrative wage garnishment at this time, as "Petitioner has provided HUD with satisfactory evidence demonstrating that her current allowable expenses exceed her monthly income." (Sec'y Stat. ¶ 8). I therefore find that Petitioner is indebted to HUD in the amounts claimed by the Secretary, and the Secretary's Motion to Dismiss Petitioner's appeal is GRANTED, subject to the finding that Petitioner is liable for the debt to HUD as claimed 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 SHALL REMAIN IN PLACE, INDEFINITELY. It is

ORDERED that PETITIONER SHALL FULLY COOPERATE with the Secretary's ongoing efforts to ascertain Petitioner's financial circumstances, subject to revocation of the Stay of Referral entered above and initially imposed in the Notice of Docketing, Order, and Stay of Referral, dated August 20, 2012. It is

FURTHER ORDERED that the Secretary is GRANTED LEAVE OF COURT to file a motion to lift stay at such time that the Secretary determines that it is warranted, based on Petitioner's then-prevailing financial circumstances.

SO ORDERED.

A handwritten signature in blue ink, appearing to read "H. Alexander Manuel", is written above a horizontal line.

H. Alexander Manuel
Administrative Judge