

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

In the Matter of:

Karrie Rose,

Petitioner.

HUDOA No. 12-H-CH-AG102

Claim No. 721006919

October 16, 2012

DECISION AND ORDER

On June 20, 2012, Petitioner requested a hearing concerning 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.

APPLICABLE LAW

The administrative judges of this Court 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 June 21, 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, (Notice of Docketing)).

Findings of Fact

On or about March 15, 2006, Petitioner executed a Subordinate Note ("Note") in favor of the Secretary in exchange for foreclosure relief in the amount of \$15,163.62. (Secretary's Statement ("Sec'y. Stat.") ¶¶ 2-3, Ex. A, dated July 6, 2012; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl.") ¶ 4, dated June 29, 2012.) The Secretary paid this partial claim pursuant to 24 C.F.R. The Subordinate Mortgage securing the Note was also executed and recorded. (Sec'y. Stat. 2, Ex. B.) The Note contained specific circumstances under which it would become due and payable, amongst which was the primary note and mortgage insured by the Secretary being paid in full by the Petitioner. (Sec'y. Stat. ¶ 3; Dillon Decl. ¶ 4) On or about March 1, 2010 the Note became payable as the lender informed HUD that the primary mortgage had been paid in full. (Sec'y.

Stat. ¶ 4; Dillon Decl. ¶ 4.) HUD thereby alleges that the Petitioner is indebted to HUD in the following amounts:

- a) \$15,094.26 as the unpaid principal balance as of May 31, 2012;
- b) \$37.71 as the unpaid interest on the principal accruing at a rate of 1% per annum through May 31, 2012; and
- c) Interest on said principal balance from June 1, 2012 accruing at a rate of 1% per annum until the debt is paid in full.

(Sec'y. Stat. ¶ 8; Dillon Decl. ¶ 8.)

A Notice of Intent to Initiate Administrative Wage Garnishment, dated May 3, 2012 was mailed to Petitioner in accordance with 31 C.F.R. 285.11(e). (Sec'y. Stat. ¶ 7; Dillon Decl. ¶ 7.) Petitioner was allowed the opportunity to enter into a written repayment agreement as is required by 31 C.F.R. 285.11 (e)(2)(ii). (Sec'y. Stat. ¶ 7; Dillon Decl. ¶ 7.) Petitioner has not to this date entered into such an agreement. (Sec'y. Stat. ¶ 7; Dillon Decl. ¶ 7.)

The Secretary proposes a repayment schedule of \$176.63 on a bi-weekly basis or 15 percent of the Petitioner's disposable income as allowed by 31 C.F.R. 285.11(i)(2)(A). (Sec'y. Stat. ¶ 10; Dillon Decl. ¶ 10.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may “present by a preponderance of the evidence that all or part of the alleged debt is unenforceable or not past due.” In the instant case, Petitioner does not dispute that the debt is not owed but instead contends that the “debt should not be due” because the “original agreement to pay . . . was to come due on September 1, 2035.” (Pet'r's Hr'g. Req., filed June 20, 2012; Sec'y. Stat., Ex. D.) As support, Petitioner submitted a letter of inquiry addressed to HUD's Financial Operations Center (FAO) in which Petitioner also questioned why the alleged debt was still owed. (Pet'r's Hr'g Req., Attach.). The record did not reflect, however, that there was a subsequent response from HUD's FAO to Petitioner's inquiry.

The Secretary asserts to the contrary that Petitioner's “payment of the primary note triggered the payment date of the Subordinate Note.” (Sec'y. Stat. ¶ 12.) The Secretary submitted, in support of Secretary's claim, a copy of the Subordinate Note signed by Petitioner in which Petitioner agreed to pay the alleged debt “[o]n September 1, 2035; or earlier . . . [if] [t]he Borrower has paid in full all amounts due under the primary Note and related mortgage.” (Sec'y. Stat., Ex. A, ¶ 4(A)(i)). Petitioner's payment in full of the primary mortgage did in fact trigger Petitioner's obligation to begin payment on the Subordinate Note. (Sec'y. Stat. ¶ 4.) Therefore, I find that Petitioner remains legally obligated to pay the alleged debt claimed by the Secretary.

In addition, Petitioner also has failed to file documentary evidence in support of her position notwithstanding being twice ordered by the Court to do so. (Notice of Docketing 2; Order for Doc. Evid., dated July 31, 2012.) This Court has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable.” *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Because Petitioner has failed to present sufficient evidence, I find that Petitioner’s claim fails for want of proof.

As a final point, Rule 26.4(d) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*.

(emphasis added).

Accordingly, I further find that, pursuant to Rule 26.4(d), Petitioner’s non-compliance with the orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

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.

A handwritten signature in black ink, appearing to read 'V. Hall', is written over a horizontal line.

Vanessa L. Hall
Administrative Judge