

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

In the Matter of:

**Debra Campbell,**  
  
Petitioner.

HUDOA No. 12-H-CH-AG108

Claim No. 780001373

December 10, 2012

**DECISION AND ORDER**

On July 18, 2012, Petitioner Debra Campbell 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.

**Applicable Law**

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 July 19, 2012, the Court stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral, p. 2, issued July 21, 2012.)

**Background**

On November 30, 1988, Petitioner executed a Note in the amount of \$29,931 with Green Tree Acceptance of Texas, Inc. (Secretary’s Statement (“Sec’y Stat.”), dated July 30, 2012; Exh. A, Note.) Green Tree Acceptance of Texas, Inc., subsequently assigned the Note to the United States of America. (Sec’y Stat. ¶ 3; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD (“Dillon Decl.”) ¶ 3, dated July 24, 2012.) HUD’s attempts to collect upon the debt have been unsuccessful. (Sec’y Stat., ¶ 2.) HUD thereby alleges that the Petitioner is indebted to HUD in the following amounts:

- a) \$19,176.82 as the unpaid principal balance as of June 30, 2012;

- b) \$623.50 as the unpaid interest on the principal accruing at a rate of 5% per annum through June 30, 2012; and
- c) Interest on said principal balance from July 1, 2012, accruing at a rate of 5% per annum until the debt is paid in full.

(Sec'y Stat., ¶ 8; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment ("Notice of Intent"), dated June 7, 2012, was mailed to Petitioner in accordance with 31 C.F.R. 285.11(e). (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 6.) The Secretary further alleges that 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., ¶ 4.) To date, Petitioner has not entered into such an agreement. Id.

Petitioner provided a copy of her monthly pay statement for the pay period ending June 20, 2012. (Sec'y Stat., Ex. A.) The pay statement reflected a monthly disposable income of \$3,492.53, after deductions. Based upon Petitioner's pay statement, the Secretary proposes a monthly repayment schedule of \$523.88, or 15% of Petitioner's disposable income, as allowed by 31 C.F.R. 285.11(i)(2)(A). (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 7.)

### Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence proving by a preponderance that all or part of the alleged debt is unenforceable or not past due. Here, Petitioner asserts that: 1) the amount claimed for the alleged debt is erroneous; 2) the Notice of Intent was insufficient; 3) facts alleged in the *Secretary's Statement* were inaccurate; and 4) the alleged debt should be subject to negotiation for settlement. (Petition for Amendment of Reason for Appeal ("Pet'r's Amendment"), pp. 2-3, filed August 22, 2012.)

First, Petitioner claims that although she was issued a Notice informing her that the principal balance of her debt was \$9,157.14, the Secretary alleges in his *Statement* that the principal balance is \$19,176.82. Petitioner has submitted for the Court's review a copy of a letter she received from the CBE Group, which Petitioner alleges is the Notice of Intent referred to in the *Secretary's Statement* as fulfilling the statutory notice requirements. (See Sec'y Stat. ¶ 4.) The letter indicates that the outstanding debt amount is \$9,157.14. (Pet'r's Amendment; Ex. A.) Petitioner states that the discrepancy may relate to an ongoing repayment agreement between Petitioner and the U.S. Department of the Treasury. Petitioner further claims that she has continued to make payments according to the terms of the alleged repayment agreement since August 1998. (Petitioner's Supplemental Statement ("Pet'r's Supp. Stat.") p.1, filed October 22, 2012.) She provided two documents mailed to her from the Treasury Department, both of which prove the existence of the previous repayment agreement.

One document, a Notice to Customers Making Payment by Check, dated February 1, 2007, identifies her debt balance as \$13,659.72. (Pet'r's Amendment; Ex. C.) The other document is a Repayment Notice that explicitly reminds Petitioner of an impending payment due "...in accordance with our agreement reached on 08/24/98." (Pet'r's Amendment; Ex. B.) Both

documents reflect the same FedDebt Case Identification number/Treasury Account Number listed on the CBE Group letter, and associated with the debt that is the subject of this proceeding.

The Secretary contends, however, that “Petitioner has provided no evidence of the current amount due,” and claims that “the amount owed as claimed by the Secretary in my July 24, 2012 Declaration is accurate, as evidenced by the Title I Defaulted Loans Case Reconstruction Report. (Secretary’s Supplemental Statement, (“Sec’y. Supp. Stat.”) ¶ 3; Ex. B.) As support, the Secretary provided a copy of the Case Reconstruction Report, which shows that Petitioner has made regular payments over the course of several years in the amount of \$100.00 towards the subject debt. (Sec’y. Supp. Stat.; Ex. D.)

After a careful examination of the record, the Court first notes that the case report submitted by the Secretary, as well as the Repayment Notice and Notice to Customers submitted by Petitioner, all refer to the same FedDebt Case Identification Number associated with the subject debt. While the Secretary failed to directly address the existence of the approximately \$10,000 discrepancy, it is apparent that such discrepancy exists. Moreover, the Secretary, by his own admission, acknowledges the credibility of the June 7, 2012, CBE Group letter, identifying it on multiple occasions as the Notice of Intent. (See Sec’y Supp. Stat., ¶ 5; Sec’y Stat., ¶ 3.) The CBE Group letter listed the outstanding principle balance as \$9,157.14. As indicated under 31 C.F.R. 285.11(e)(1)(i), Petitioner must be notified of the “nature and amount of the debt.” As required, the Secretary, via the CBE Group letter/Notice of Intent, identified the nature and amount of the subject debt as \$9,157.14. It would be improper to allow the Secretary to rely on the CBE Group letter to confirm the date of notice, but not to verify the amount of the debt.

The case report submitted by the Secretary for review verified that payments were made by Petitioner for an extended period of time in the amount of \$100 per month. The case report did not prove that a previous repayment agreement no longer existed, or that the amount claimed by the Secretary was in fact the remaining balance of the subject debt. Therefore, given the persuasive nature of the Petitioner’s documentary evidence which stands wholly uncontested and in some regards is corroborated by the Secretary, I find that the Petitioner has met her burden of proof and proven by a preponderance of the evidence that she in fact owes HUD an outstanding principal balance of \$9,157.14.

Next, Petitioner alleges that the Notice of Intent was insufficient. Petitioner claims that, pursuant to 31 C.F.R. 285.11(e)(1)(i), she must be notified of the “nature and amount of the debt.” (Amendment, p. 4.) Petitioner further claims the Notice of Intent was inadequate and insufficient because of the discrepancy regarding the amount owed, and also because she was not allowed the opportunity to enter into a repayment agreement with HUD, as required by 31 C.F.R. 285.11(e)(2)(ii). Petitioner’s allegation regarding the discrepancy in the amount owed has already been addressed, with the Court finding that the amount owed was \$9,157.14. But, the opportunity to enter into a repayment agreement with HUD has not yet been addressed.

Here, Petitioner claims that she attempted to contact the Secretary to set up a repayment agreement. (Amendment; p.3.) Petitioner also claims that she repeatedly called the number provided in the Notice of Intent, but was ultimately informed by a representative that a repayment agreement could not be entered into despite the fact that the calls were made within

the required 30-day deadline. Id. If Petitioner's allegation had been established as factually accurate, it may have been considered a proper ground for insufficiency of notice. The Secretary would then need to produce evidence to rebut that allegation. Such did not occur in this case. Petitioner has provided no documentary evidence substantiating her assertion that such communications took place in the manner she alleges, or that they took place at all. This Court has consistently maintained that "mere [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)). Relying on Troy Williams, this Court finds that mere allegations also are insufficient to show insufficiency of notice, and as a result, based upon the dearth of evidence presented, I further find that Petitioner's claim of insufficiency of notice fails for want of proof.

Petitioner, in addition, raises other non-substantive challenges regarding several typographical errors contained in the *Secretary's Statement* wherein the effective dates reflected in certain identified documents were alleged to be inaccurate. (Amendment; p.1.) The Secretary has countered these allegations by producing hard copies of the documents in question and providing a sufficient explanation for the errors, which, in any event, were *de minimus* and did not affect the outcome of any substantive issues.

As a final point, Petitioner stated that she intends "to repay the debt of \$9,157.14" and requested that the Court allow her "to pay one lump sum payment equal to the monthly payments in arrears as of the date of the ruling of this court." (Amendment; p.4.) Petitioner further requested to "continue paying the debt according to the original agreement with the U.S. Department of Treasury with no Garnishment of wages, and allow her to continue to pay \$100 per month until the debt is paid with no accrual of interest or fees, as in original agreement." Id. While this Office is not authorized to extend, recommend, negotiate, or accept any payment plan, or even consider any settlement offer on behalf of HUD, Petitioner may wish to discuss this matter with either Counsel for the Secretary, or submit a HUD Office Title I Financial Statement (HUD Form 56142) to Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

For the reasons set forth above, I find that neither party has produced any evidence to prove or disprove that a repayment agreement still exist between the parties. The Secretary has successfully proven that the debt alleged against Petitioner is legally enforceable and past due, but, the Court is not fully persuaded by the evidence presented by the Secretary that the amount owed in this case is the amount claimed by the Secretary. On the other hand, while Petitioner agrees that the alleged debt is legally enforceable and past due, she also has sufficiently met her burden of proof by showing that the remaining balance owed on the subject debt is \$9,157.14, an amount less than the amount claimed by the Secretary.

### **ORDER**

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. Therefore, it is hereby

**ORDERED** that the Secretary shall seek collection of this outstanding obligation, by means of administrative wage garnishment, in the amount of \$9,157.14.

/o/ original signature

Vanessa L. Hall

Administrative Judge