

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

In the Matter of:

Trina Sherre Shaw,

Petitioner

HUDOA No.: 12-H-NY-AG97

Claim No. 520883319SP

October 16 , 2012

DECISION AND ORDER

On May 30, 2012, 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.

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(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 May 30, 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"), dated May 30, 2012.)

Findings of Fact

On February 11, 1993, Petitioner executed and delivered a Retail Installment Contract ("Note") to Faucette Homes Inc. dba Choicenter in the amount of \$14,021.00, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Secretary's Statement ("Sec'y Stat.") ¶2, Ex. A, dated June 21, 2012.) Contemporaneously, on February 11, 1993, the Note was assigned by Faucette Homes Inc. dba Choicenter to Logan-Laws Financial Corporation ("Logan-Laws"). (Sec'y Stat. ¶3, Ex. A.) Logan-Laws was defaulted as an issuer of Mortgage Backed Securities ("MBS") due to its failure to comply with the Government National Mortgage Association's ("GNMA") MBS program requirements. (Sec'y Stat. ¶4; Declaration of Leslie A. Meaux, Director, Mortgage-Backed Securities Monitoring Division, Government National Mortgage Association of HUD ("Meaux Decl.") ¶ 4, dated June 13, 2012.) Upon default by Logan-Laws, all of its rights, title,

and interest in Petitioner's loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Logan-Laws and GNMA. (Sec'y Stat. ¶5; Meaux Decl. ¶4.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec'y Stat. ¶6; Meaux Decl. ¶5.) Petitioner is currently in default on the Note. The Secretary has made efforts to collect from the Petitioner, but has been unsuccessful. HUD thereby alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$11,655.45 as the unpaid principal balance;
- b) \$2,365.11 as the unpaid interest on the principal balance at 13% per annum through June 13, 2012;
- c) \$22.99 as the penalty; and
- d) interest on said principal balance at 13% per annum from June 13, 2012 until paid.

(Sec'y Stat. ¶7; Meaux Decl. ¶6.)

A Notice of Intent to Initiate Administrative Wage Garnishment, dated January 21, 2012, was mailed to Petitioner in accordance with 31 C.F.R. § 285.11(e). (Sec'y Stat. ¶8; Meaux Decl. ¶7.) Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement under mutually agreeable terms. (Sec'y Stat. ¶9; Meaux Decl. ¶7.) As of June 13, 2012, Petitioner has not entered into a written repayment agreement. (Sec'y Stat. ¶9; Meaux Decl. ¶7.)

The Secretary's proposed repayment schedule is 10% of Petitioner's disposable pay rather than the Federal Agency allowed amount of 15%. (Sec'y Stat. ¶10; Meaux Decl. ¶9.)

Discussion

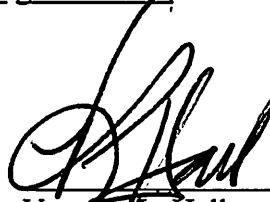
Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may "present by a preponderance of the evidence that all or part of the alleged debt is unenforceable or not past due." In this case, Petitioner does not dispute the existence or the amount of the debt but rather requests that "Due to health reasons, [she] would [be able] to negotiate an amount to settle this debt in full" because "[she] was diagnosed with cancer." (Pet'r's Hr'g Req., filed May 30, 2012.) However, there is no evidence in the record that substantiates Petitioner's medical diagnosis of cancer.

On August 12, 2012, Petitioner proposed to pay \$5,000 towards full settlement of her debt and attached a Consumer Debtor Financial Statement. (Petitioner's Response to Order, filed August 13, 2012 and August 29, 2012.) This Court is not authorized to extend, recommend, or accept any payment plan, or settlement offer on behalf of the HUD, but Petitioner may wish to discuss this matter with either Counsel for the Secretary, or submit a HUD 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, extension 8206.

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**. 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