

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

In the Matter of:

Cynthia Enriquez,

Petitioner

HUDOA No.: 12-M-CH-AG107

Claim No. 721007085

November 1, 2012

DECISION AND ORDER

On July 18, 2012, Petitioner requested a hearing concerning the existence, amount or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). The Debt Collection Improvement Act of 1996 authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of nontax debts owed to the United States Government. 31 U.S.C. § 3720D.

The HUD Secretary has designated the administrative judges of this Office to conduct a hearing to determine whether the disputed debt is past due and legally enforceable. The 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 proving the existence and amount of the alleged debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner must then 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).

Pursuant to 31 C.F.R. § 285.11(f)(4), on July 19, 2012, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated July 19, 2012.)

Background

On November 18, 2004, Petitioner executed and delivered a Partial Claim Subordinate Note ("Note") payable to the order of the Secretary of Housing and Urban Development ("HUD") in the amount of \$4,111.66. (Secretary's Statement ("Sec'y Stat."), filed July 25, 2012; ¶ 1, Ex. A.) The Note was executed and delivered to evidence a loan that was made by HUD to Petitioner as a means of providing foreclosure relief by payment of arrearages on her primary FHA-insured mortgage. (Sec'y Stat. ¶ 1; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl.") ¶ 4, dated July 24, 2012.)

The Note provides that it becomes due on November 1, 2030 or earlier, when the first of the following events occurs: 1) When the Borrower has paid in full all amounts due under the primary note and related HUD-insured mortgage. 2) The Maturity Date of the primary Note has been accelerated. 3) The primary Note and related mortgage are no longer insured by the Secretary, or 4) The property is not occupied by the purchaser as his or her principal residence. (Sec'y Stat. ¶ 2.)

The November 9, 2007, Settlement Statement provided by the Petitioner indicated the \$57,037.29 was paid to Countrywide Home Loans when Petitioner sold her home. (Sec'y Stat. ¶ 3; Dillon Decl. ¶ 4.) There is no indication that Petitioner's debt to HUD was paid as a result of this sales transaction. The \$57,037.29 paid to Countrywide Home Loans at the time of closing did not include the Partial Claim debt owed to HUD. (Sec'y Stat. ¶ 3; Dillon Decl. ¶ 4; Exhibit C) On or about November 15, 2007, the FHA Insurance on the first mortgage was terminated, as the mortgagee indicated that the mortgage was paid in full. (Sec'y Stat. ¶ 3; Dillon Decl. ¶ 4.)

The Secretary has made efforts to collect this debt from Petitioner. However, the petitioner remains delinquent. (Sec'y Stat. ¶ 3; Dillon Decl. ¶ 5.) The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$2,503.77 as the unpaid principal balance as of June 30, 2012;
- (b) \$8.36 as the unpaid interest on the principal balance at 1% per annum through June 30, 2012; and
- (c) interest on said principal balance from July 1, 2012 at 1% per annum until paid.

(Sec'y Stat. ¶ 3; Dillon Decl. ¶ 5.)

Pursuant to 31 C.F.R. § 285.11 (e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated May 21, 2012, was sent to Petitioner. (Sec'y Stat. ¶ 4; Dillon Decl. ¶ 6.)

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 mutually agreeable terms. (Sec'y Stat. ¶ 4; Dillon Decl. ¶ 7.) Petitioner did not enter into a repayment agreement or pay the debt in full based on the Notice. (*Id.*)

The Petitioner provided a copy of her monthly pay statement for the pay period ending June 30, 2012 (Sec'y Stat. ¶ 5; Dillon Decl. ¶ 8; Exhibit D.) This pay statement indicated that Petitioner's gross pay totaled \$2,350.20; less allowable deductions of \$332.91 (Withholding Tax \$136.56; Medicare \$30.66; Medical Plan \$165.69) indicating a monthly net disposable pay of \$2,017.29. (Dillon Decl. ¶ 8.) Based on this pay statement, Administrative Wage Garnishment authorized at 15% of Petitioner's disposable pay would result in a monthly repayment schedule under such garnishment order equal to \$302.59. (Sec'y Stat. ¶ 5; Dillon Decl. ¶ 8.)

The Secretary's proposed payment under an administrative wage garnishment order is \$302.59 monthly or 15% of Petitioner's disposable pay. (Sec'y Stat. ¶ 5; Dillon Decl. ¶ 8.)

Discussion

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists, the amount of the debt is incorrect or unenforceable, or that the terms of the proposed repayment schedule would cause financial hardship. 31 C.F.R. § 285.11(f)(8)(ii).

As evidence of the existence and amount of the debt, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note and the sworn testimony of the Director of HUD's Asset Recovery Division. (See Sec'y Stat., Ex. A, Ex. B). I therefore find that the Secretary has met his initial burden of proof.

Petitioner objects to the enforceability of the debt by stating that "[she] sold [her] house and [] was told that everything was to prorated to the day of the sale. (Pet'r.'s Hr'g. Req., filed July 18, 2012.) Petitioner, however, has failed to file any documents to prove that she is not indebted to the Department in the amounts claimed by the Secretary.

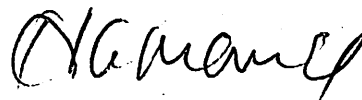
Petitioner was ordered on two occasions to file documentary evidence to prove that the alleged debt is either unenforceable or not past due. On each occasion, Petitioner failed to comply with this Court's Order. (Notice of Docketing, at 2; Order, dated July 19, 2012; Order, dated September 24, 2012.) Accordingly, the Secretary's position remains unrefuted. This Office has previously held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable." *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, without documentary evidence from Petitioner to refute or rebut the Secretary's claim, I find that Petitioner's claim, challenging the existence of the alleged debt, must fail for lack of proof.

ORDER

Based on the foregoing, I find the debt that is the subject of this proceeding to be 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 pay.

November 1, 2012

A handwritten signature in cursive script, appearing to read "H. Alexander Manuel".

H. Alexander Manuel
Administrative Judge