

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

In the Matter of:

Judith Herrera,

Petitioner

HUDOA No.: 12-M-CH-AWG27

Claim No. 721006779

July 13, 2012

DECISION AND ORDER

On December 14, 2011, Petitioner 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.

The administrative judges of this Office are designated to determine whether the Secretary may collect an alleged debt by means of administrative wage garnishment if 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 the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner thereafter must 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). In addition, Petitioner may present evidence that the terms of the 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.*)

Pursuant to 31 C.F.R. § 285.11(f)(10)(ii), HUD must suspend any active wage withholding order beginning on the 61st day after receipt of the hearing request and continuing until a written decision has been rendered. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), filed December 19, 2011.)

Background

On September 18, 2009, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note" or "Subordinate Note") in the amount of \$4,448.35. (Secretary's Statement ("Sec'y Stat."); ¶¶ 1-2, filed January 5, 2012; Ex. 1, Note.) In exchange, HUD advanced funds to Petitioner's lender to bring the primary home mortgage current on Petitioner's home, thereby avoiding foreclosure. (Sec'y Stat., ¶ 1; Note.)

The Subordinate Note described specific events that would cause the debt to become immediately due and payable. One of these events is the payment in full of the primary mortgage. (Sec'y Stat., ¶ 2; Note, ¶ 4(A)(I).)

On or about June 17, 2010, HUD terminated the FHA insurance on the primary mortgage because the primary lender notified the Secretary that the mortgage had been paid in full. (Sec'y Stat., ¶ 3; Ex. 2, Declaration of Gary Sautter, Acting Director, Asset Recovery Division, HUD Financial Operations Center, ("Sautter Decl."), dated January 4, 2012, ¶ 4.) The Note thus became due and payable on that date. The Secretary alleges that Petitioner failed to make payment at the place and in the amount specified in the Note. As a result, the Secretary contends that Petitioner is indebted to HUD in the following amounts:

- (a) \$4,134.10 as the unpaid principal balance as of December 31, 2011;
- (b) \$3.44 as the unpaid interest on the principal balance at 1.0% per annum through December 31, 2011; and
- (c) interest on said principal balance from January 1, 2012 at 1.0% per annum until paid.

(Sec'y Stat., ¶¶ 5-6; Sautter Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated August 29, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 7; Sautter 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 terms agreeable to HUD. (Sec'y Stat., ¶ 8; Sautter Decl., ¶ 7.) To date, Petitioner has not entered into such an agreement. (Sec'y Stat., ¶ 8; Sautter Decl., ¶ 8.)

A Wage Garnishment Order was issued to Petitioner's employer on September 29, 2011. (Sec'y Stat., ¶ 9; Sautter Decl., ¶ 9.) To date, Petitioner's wages have been garnished twice, for a total of \$853.67. (Sec'y Stat., ¶ 10; Sautter Decl., ¶ 10.)

The Secretary suggests a proposed repayment of \$429.13 per month, which constitutes 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 11; Sautter Decl., ¶ 11; Ex. A, Petitioner's Income Verification, dated November 30, 2011.)

Discussion

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

Petitioner first disputes the existence and enforceability of the debt alleged by the Secretary. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed Dec. 14, 2011.) Petitioner suggests that the debt may be not be owed because the title company which had handled the selling of her home had informed her, "all was okay and [Petitioner] didn't owe the debt." (*Id.*)

In order for Petitioner to prove that a debt owed to the Secretary has been satisfied there must be either a written release from HUD or evidence of valuable consideration accepted by HUD from Petitioner, which would indicate an intent to release. *See Hediéh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Petitioner has failed to produce corroborating evidence to show that she paid the debt in this case or that she was released from the debt by HUD. Accordingly, I find that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

Petitioner next contends that the proposed administrative wage garnishment would result in financial hardship. (Pet'r's Hr'g Req.) More specifically, Petitioner states that she is, "barely making ends meet and most months [has] little or no extra money." (*Id.*) The only documentary evidence filed by Petitioner in support of her position was a Consumer Debt Financial Statement. (*See* Pet'r's Hr'g Req.)

In the Notice of Docketing, this Court ordered petitioner to file, "documentary evidence which will prove that repayment of the debt would cause a financial hardship to Petitioner" (Notice of Docketing, 2.) The Notice of Docketing included examples of sufficient documentary evidence, including receipts, pay statements, and copies of bills or other expenses showing a record of payment. (*Id.*)

Petitioner failed to respond to the Notice of Docketing. This Court then issued a second order that notified Petitioner that her response was past due and directed her to file documentary evidence on or before March 23, 2012. (Order, issued March 1, 2012.) The Order stated that, "[f]ailure to comply with this Order may result in . . . the entry of judgment based on the documents of record." (emphasis in original) (*Id.*) Petitioner has failed to comply with both the Notice of Docketing and the March Order.

To date, the only evidence filed by Petitioner to prove financial hardship is her Consumer Debtor Financial Statement. The Notice of Docketing informed Petitioner that "[T]o prove financial hardship, Petitioner's documentary evidence should not be limited to a mere list of expenses, but instead must include proof of payment of household expenses." (Notice of Docketing, 2.) The Consumer Debtor Financial Statement consists entirely of listed expenses, and so is only of limited value to prove financial hardship. I therefore find that Petitioner remains obligated to repay the instant debt, and has not shown that a garnishment will cause a financial hardship.

Lastly, Petitioner appears to claim that she is willing to enter into a payment arrangement plan to pay the balance owed on the alleged debt and is asking HUD for "consideration to make affordable payments and not [have] payments paid by wage garnishment."

This Court is not authorized to extend, recommend, or accept any payment or settlement offer on behalf of HUD. Petitioner may wish to discuss this matter with counsel for the Secretary or contact Lester J. West, Director, HUD Albany Financial Operations Center, Corporate Circle, Albany, NY 12203-5121 at 1-800-669-5152, extension 4206. Petitioner also "[M]ay at any time, request a review by the agency of the amount garnished, based on materially

changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.” 31 C.F.R. § 285.11(k)(1).

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 the subject debt by means of administrative wage garnishment to the extent authorized by law.

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H. Alexander Manuel
Administrative Judge

July 13, 2012