

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

In the Matter of:

Michelle Barr,

Petitioner

HUDOA No.: 12-M-NY-AG110

Claim No. 780732803

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 February 20, 2009, Petitioner executed and delivered a promissory note to Domestic Bank in the amount of \$25,000, ("The Note"), that was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y Stat."), filed July 27, 2012, ¶ 2, Ex. A.) Petitioner failed to make payment on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54, Admirals bank f/k/a Domestic Bank assigned the Note to the United States of America. The Secretary is the holder of the Note on behalf of the United States. (Sec'y Stat., ¶ 3, Ex. B.)

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. (Sec'y Stat. ¶ 4; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl.") ¶ 4, dated July 26, 2012.) The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$11,785.09 as the unpaid principal balance as of June 30, 2012;
- (b) \$19.64 as the unpaid interest on the principal balance at 1% per annum through June 30, 2012;
- (c) \$849.61 as the unpaid penalties and administrative costs as of June 30, 2012; and
- (d) interest on said principal balance from July 1, 2012 at 1% per annum until paid.

(Sec'y Stat. ¶ 4; Dillon Decl. ¶ 4.)

Pursuant to 31 C.F.R. § 285.11 (e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated June 18, 2012, was sent to Petitioner. (Sec'y Stat. ¶ 5; Dillon Decl. ¶ 5.)

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. ¶ 6; Dillon Decl. ¶ 6.) Petitioner did not enter into a repayment agreement or pay the debt in full based on the Notice. (Sec'y Stat. ¶ 6; Dillon Decl. ¶ 7.)

Petitioner states that she is already being garnished, however, she has failed to provide HUD with her current pay statement. (Sec'y Stat. ¶ 13; Dillon Decl. ¶ 8.)

The Secretary's proposed payment under an administrative wage garnishment order is \$351.50 monthly, which would liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay. (Sec'y Stat. ¶ 13; 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 "fees were added on after my taxes [her] taxes were garnished. [She] wasn't given a chance or notice of the add on. Also [she] can't afford 15% out of [her] wages [she] already [has] a lien being charge[d] against [her] presently. The fees added almost double [to] the original amount[sic]." (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.

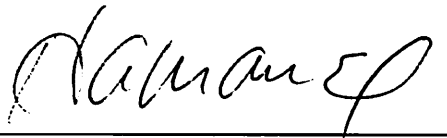
Petitioner was ordered on two occasions to file documentary evidence to prove that the alleged debt is either unenforceable or not past due. On each occasion, Petitioner failed to comply with this Court's Order. (Notice of Docketing, at 2; Order, dated July 19, 2012; Order, dated September 24, 2012.) 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



H. Alexander Manuel
Administrative Judge