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

In the Matter of:

**Sylvia Griffin-Latimor,**

Petitioner

HUDOA No. 12-M-NY-AG89

Claim No. 721007231

**October 19, 2012**

**DECISION AND ORDER**

On May 9, 2012, Sylvia Griffin-Latimor ("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.

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 May 9, 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, dated May 9, 2012.)

**Background**

On or about May 31, 2000, the HUD-insured loan on Petitioner's home was in default. (Secretary's Statement ("Sec'y Stat.") ¶ 2, dated May 29, 2012; Declaration of Brian Dillon, Director, HUD Financial Operations Center, Albany, N.Y., dated May 18, 2012, ("Dillon Decl."), Exh. A.) To prevent foreclosure on Petitioner's home, HUD advanced funds to

Petitioner's lender in a sum sufficient to bring the primary note current. (Sec'y Stat. at ¶ 3.) On May 31, 2000, Petitioner executed a Subordinate Note ("Note") in favor of the Secretary in the amount of \$4,836.86 (Id. at 4 and Exh. B, Note.)

Paragraph 4(i) of the Note provides that it becomes due and payable upon the primary note being paid in full. (Sec'y Stat. ¶ 5; Exh. B.) On or about August 1, 2002, the Secretary was notified that the FHA insurance on Petitioner's primary note was terminated as the primary note had been paid in full. (Sec'y Stat. ¶ 6.) This rendered the Note immediately due and payable.

Pursuant to the Note, payment was to be made to "U.S. Department of HUD, c/o Clayton National, 4 Corporate Dr., Shelton, CT 06484 or any other place as Lender may designate in writing by notice to Borrower." (Note at 4(B).) Petitioner failed to make any payments on the Note. (Sec'y Stat. ¶ 8.)

The Secretary attempted to collect on the Note from Petitioner, but has been unsuccessful. (Sec'y Stat., ¶ 9.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

(a) \$4,836.86 as the unpaid principal balance as of April 30, 2012;

(b) \$32.24 as the unpaid interest on the principal balance accruing at a rate of 1% per annum through April 30, 2012;

(c) \$326.51 as the unpaid penalties and administrative costs as of April 30, 2012; and

(d) interest on said principal balance from May 1, 2012 accruing at a rate of 1% per annum until the principal balance is paid in full.

(Sec'y Stat. ¶ 9; Dillon Decl. ¶ 5.) A Notice of Intent to Initiate Wage Garnishment Proceedings dated April 9, 2012 was also sent to Petitioner at her current address. (Sec'y Stat. ¶ 10.)

### **Discussion**

In her *Hearing Request* Petitioner asserts that she does not owe the debt. (Petitioner's Hearing Request (Pet'r's Hr'g Req.), received May 9, 2012.) Petitioner is entitled to present evidence that the debt does not exist. 31. C.F.R. 285.11 (f)(8)(ii). This Court issued a *Notice of Docketing, Order, and Stay of Referral* ("Notice of Docketing") on May 9, 2012 in which Petitioner was ordered to "file documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due" no later than June 26, 2012.

This Office issued a final order in which Petitioner was notified that her response was past due. (Order, dated July 17, 2012.) Petitioner was directed to provide documentary evidence to support her claim that she did not owe the debt no later than August 8, 2012 and was notified

that, "failure to comply with this Order may result in. . .the entry of judgment based on the documents of record." (emphasis in original) (*Id.*)

Petitioner failed to comply with all orders issued by this Court. To date, Petitioner has only furnished the Court with the assertions made in Petitioner's *Hearing Request*. This Office has consistently maintained that "assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Since Petitioner, despite repeated orders, has failed to offer any evidence that the debt alleged by the Secretary is not past due or unenforceable, Petitioner's argument fails for want of proof.

### **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

**ORDERED** that the Secretary is authorized to seek collection of this outstanding debt obligation by means of administrative wage garnishment to the extent authorized by law.

/s/

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H. Alexander Manuel  
Administrative Judge