

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

In the Matter of:

REBECCA L. KOGUT,

Petitioner.

HUDOA No. 13-AM-0038-AG-014

Claim No. 780742141-0A

March 28, 2013

DECISION AND ORDER

On October 31, 2012, Petitioner Rebecca L. Kogut (“Petitioner”) filed a request for hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Government”). 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 federal government.

The Secretary of HUD has designated the administrative judges of this Office to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This case is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. Pursuant to 31 C.F.R. § 285.11(f)(4), on November 7, 2012, this Court 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”), issued November 7, 2012.)

Background

On June 18, 2008, Petitioner executed and delivered a Retail Installment Contract – Security Agreement (“Note”) in the amount of \$32,749.72 to Luv Homes Jacksonville FL. (Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed November 20, 2012; Ex. A, Note.) The Note was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. The Note was contemporaneously assigned to Vanderbilt Mortgage and Finance, Inc., and later, upon Petitioner’s default, assigned to the United States of America. (Sec’y Stat., ¶¶ 3-4; Ex. A, p. 5; Ex. B.) The Secretary is the holder of the Note on behalf of the United States. (Sec’y Stat., ¶ 4.)

The Secretary’s attempts to collect the debt have been unsuccessful. (*Id.*, at ¶ 5.) Accordingly, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$13,282.73 as the unpaid principal balance as of October 31, 2012;

- b) \$699.75 as the unpaid interest on the principal balance at 1.0% per annum through October 31, 2012;
- c) \$835.63 in penalties through October 31, 2012;
- d) \$35.33 in administrative costs through October 31, 2012; and
- e) interest on said principal balance from November 1, 2012, at 1.0% per annum until paid.

(Sec’y Stat, ¶ 5; Ex. C, Declaration of Brian Dillon,¹ (“Dillon Decl.”), ¶ 4.)

A Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings (“Garnishment Notice”), dated October 8, 2012, was mailed to Petitioner, in accordance with 31 C.F.R. 285.11(e). (Sec’y Stat., ¶ 6; Dillon Decl., ¶ 5.) The Garnishment Notice afforded Petitioner the opportunity to enter into a written repayment agreement, as required by 31 C.F.R. 285.11 (e)(2)(ii). (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 6.) To date, Petitioner has not entered into such an agreement. (Dillon Decl. ¶ 7.)

The Secretary states that HUD was unable to obtain a copy of Petitioner’s pay statement. (Sec’y Stat., ¶ 9.) Accordingly, the Secretary proposes a repayment schedule of \$412.60 per month, which will liquidate the debt in approximately three years. (Sec’y Stat., ¶ 9; Dillon Decl., ¶ 8.)

Discussion

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, thereafter, must show, by a preponderance of the evidence, that the debt does not exist or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue financial hardship, or that collection of the debt may not be pursued due to operation of law. Id.

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

Petitioner does not dispute the existence or amount of the debt. Rather, she states in her *Hearing Request* that any garnishment of her income will cause substantial financial hardship. (Petitioner’s *Hearing Request*, p. 5, filed October 31, 2012.) Petitioner also notes that she would accept a repayment agreement, and would consider a short sale, a deed transfer, or “any other options” to resolve the debt. Id.

The Notice of Docketing ordered Petitioner to file, “on or before December 17, 2012,” any documentary evidence proving that she did not owe all or part of the alleged debt. Notice of

¹ Dillon is the Director of the Asset Recovery Division of HUD’s Financial Operations Center.

Docketing, 2 (emphasis in original). Petitioner did not file any information by that date. The Court then issued an *Order* on January 10, 2013, instructing Petitioner to file evidence proving her financial hardship claim “on or before February 1, 2013.” Order for Documentary Evidence (“January Order”), issued January 10, 2013 (emphasis in original). Petitioner again failed to file any evidence by that date. Finally, on February 6, 2013, the Court instructed Petitioner to file her evidence on or before February 21, 2013. Order for Documentary Evidence (“February Order”), issued February 6, 2013.

Both the *January Order* and the *February Order* informed Petitioner that:

“[F]ailure to comply with this Order may result in the imposition of sanctions to include the entry of judgment in favor of the opposing party in this case, a decision based on the documents of record, or other sanctions deemed necessary and appropriate by the Administrative Judge.”

January Order, p.1; February Order, p. 1. (emphases in original).

To date, Petitioner has not responded to any of the Court’s *Orders* and has not filed any documentary evidence supporting her claim. Petitioner has therefore failed to prove that the proposed garnishment amount will cause financial hardship. Accordingly, I find Petitioner’s debt in this case to be past due and legally enforceable in the amount claimed by the Secretary.

Additionally, Petitioner’s suggested alternate resolutions are ultimately unavailing. As the Secretary notes, Petitioner was afforded the opportunity to enter into a repayment agreement, but failed to do so. (Sec’y Stat., ¶ 7.) Moreover, the record indicates that the Secretary has already considered and rejected Petitioner’s other proposed solutions. (See Dillon Decl., ¶ 9.) The Court is not authorized to extend, recommend, or accept any payment plan, or consider any settlement offer on behalf of HUD. If Petitioner still seeks to initiate a repayment plan, she may wish to submit a HUD Office 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.

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 this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.



H. Alexander Manuel
Administrative Judge