

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

In the Matter of:

**JOY M. TORRES (aka Torrez),**

Petitioner.

HUDOA No. 13-AM-0063-AG-025  
Claim No. 7807432480A

May 8, 2013

**DECISION AND ORDER**

On December 3, 2012, Joy Torres ("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 collection of debts owed to the United States government.

**Applicable Law**

The administrative judges of this Office are designated to determine whether the Secretary of HUD ("Secretary") may collect on alleged indebtedness by means of administrative wage garnishment when such action is contested by a debtor. This Court conducts these hearings in accordance with procedures set forth in 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

The Secretary has the initial burden to prove the "existence or the amount of the alleged debt." 31 C.F.R. § 285.11(f)(8). Thereafter, Petitioner must show "by a preponderance of the evidence that no debt exists or that the amount ... is incorrect. In addition, the Petitioner [may show] 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 December 7, 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 ("Notice of Docketing."))

**Background**

On September 16, 2009, Petitioner executed and delivered a Note to Domestic Bank in the amount \$15,207.00. (Sec'y Stat., ¶ 2; Exh. A, Note.) The Note was insured against nonpayment by the Secretary of HUD pursuant to Title I of the National Housing Act, 12 USC § 1703. (Sec'y Stat. ¶ 2; Exh. B, Declaration of Brian Dillon ("Dillon Decl."), ¶¶ 2-3.

Petitioner failed to make payments as agreed in the Note. As a result, on February 21, 2012, the Note was assigned by Admirals Bank, formerly known as Domestic Bank, to HUD. (Sec'y Stat., ¶ 4; Exh. A, at 3; Dillon Decl. ¶ 3.) HUD has attempted to collect the amount due under the Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 5; Dillon Decl. ¶ 4.) HUD alleges Petitioner is justly indebted to the Secretary of HUD in the following amounts:

- a) \$14,694.89 as the unpaid principal balance as of November 30, 2012;
- b) \$406.78 as the unpaid interest on the principal balance at 1% per annum through November 30, 2012;
- c) \$937.76 in penalties and administrative costs as of November 30, 2012; and
- d) interest on principal balance from December 1, 2012 at 1% per annum until paid.

(Sec'y Stat., ¶ 8; Dillon Decl. ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent"), dated November 9, 2012, was sent to Petitioner. (Sec'y Stat., ¶ 6.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement under terms agreeable to HUD. However, as of the date of this *Decision and Order*, Petitioner has not entered into such an agreement. (*Id.*) Accordingly, the Secretary proposes a repayment schedule of \$445.54 per month which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards (31 C.F.R. § 901.8), or 15 percent of Petitioner's disposable income.<sup>1</sup> (Sec'y Stat., ¶ 7.)

### 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). Thereafter, Petitioner 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 to Petitioner, 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 and sworn testimony of the Director of HUD's Asset Recovery Division. Accordingly, I find that the Secretary has met his burden.

On December 3, 2012, Petitioner filed a Hearing Request alleging the amount of the debt was incorrect because "[t]he original amount was lower than the amount listed" in the Notice of Intent. (Pet'r's Hr'g Req.) Aside from this statement, Petitioner made no further allegations nor

---

<sup>1</sup> Petitioner declined to provide a paystub to the HUD.



produced any documentary evidence supporting her assertion despite being ordered to do so on two separate occasions.<sup>2</sup> (Notice of Docketing; Order, dated February 6, 2013.)

Petitioner has failed to comply with both orders issued by this Court. To date, Petitioner only furnished the Court with an assertion made in Petitioner's *Hearing Request* bereft of any documentary evidence to support it. This Court 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 urging, has failed to offer any evidence that the amount of the debt alleged by the Secretary is incorrect, I find 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 hereby

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



---

H. Alexander Manuel  
Administrative Judge

---

<sup>2</sup> Petitioner did, however, provide a letter from her attorney, James R. Weinandy, indicating Petitioner has authorized him to discuss and negotiate any debt related matter Petitioner has. On March 18, 2013, the Court received a call from Mr. Weinandy requesting copies of the filings in this case. However on April 17, 2013, the Court received another call from Mr. Weinandy stating that he is representing Petitioner in her bankruptcy proceedings only. As of the date of this decision, the Court has not received any documentation indicating that Petitioner has proceeded with bankruptcy.