

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

In the Matter of:

YNEZ VALENZUELA,

Petitioner

HUDOHA No. 13-AM-0065-AG-027

Claim No. 201770995113-OA

April 10, 2013

DECISION AND ORDER

On December 11, 2012, Ynez Valenzuela (“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” 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)(10)(ii), HUD must suspend any active wage withholding order beginning on the 61st day after receipt of the hearing requested and continuing until a written decision has been rendered.

Background

On November 9, 1994, Petitioner executed and delivered a Note to F.C. Chadwick Financial Services in the amount of \$25,000. (Secretary’s Statement (“Sec’y Stat.”), filed December 31, 2012, ¶ 2; Ex. 1, Note.) The Note was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec’y Stat., ¶ 3.)

When Petitioner failed to make payment on the Note, the lender, pursuant to 24 C.F.R. § 201.54, assigned the Note to the United States of America. (Sec’y Stat., ¶ 4; Declaration of Gary Sautter, Acting Director, Asset Recovery Division, HUD Financial Operations Center “Sautter Decl.”, dated December 20, 2012, ¶ 3.)

HUD’s attempts to collect the debt from Petitioner have been unsuccessful. Sec’y Stat., ¶ 5; Sautter Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$24,640.88 as the unpaid principal balance as of December 12, 2012;
- (b) \$15,813.10 as the unpaid interest on the principal balance at 5% per annum through December 12, 2012;
- (c) interest on said principal balance from November 1, 2012, at 1% per annum until paid.

(Sec'y Stat., ¶ 7; Sautter Decl., ¶ 4.)

A Wage Garnishment Order ("Garnishment Order"), dated September 13, 2012, was mailed to Petitioner, and Petitioner's pay was garnished six times. All garnishments are reflected in the outstanding amounts listed above. (Sec'y Stat., ¶ 8; Sautter Decl., ¶ 8.)

After reviewing Petitioner's current financial condition, HUD agrees to a lower garnishment rate of \$175 bi-weekly. (Sec'y Stat., ¶ 9.)

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 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 in this case, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note and the sworn testimony of the Acting Director of HUD's Asset Recovery Division. (Ex. 1; Ex. 2.) Accordingly, I find that the Secretary has met his initial burden of proof.

Petitioner does not dispute the existence or enforceability of the debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed December 11, 2012.) Rather she asserts that a garnishment in the amount requested by the Secretary will create a "financial hardship." Id. at 1. Petitioner has provided documentation in support of her claim of financial hardship, including a Consumer Debtor Financial Statement, bank statements, an IRS tax bill, a bill for dental work, and a tax return, and a W-2 form. (See Pet'r's Hr'g Req; Petitioner's Financial Records ("Pet'r's Financial Docs."), filed December 11, 2012.)

After submitting her Hearing Request and Financial Records, Petitioner signed an agreement with HUD to adjust the administrative wage garnishment amount. ("Installment Agreement," dated December 19, 2012.) This agreement provides that the administrative wage garnishment will be adjusted to \$175 bi-weekly until the account is paid in full. Id. The Secretary has indicated that after reviewing Petitioner's financial records, and this agreement, that HUD agrees to adjust the administrative wage garnishment to \$175 bi-weekly. (Sec'y Stat., ¶ 9.)

The Secretary has established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. Accordingly, I find that the Secretary is authorized to seek repayment of the debt via administrative wage garnishment in the amount agreed to by the parties.

ORDER

For the reasons set forth above, the Order imposing the stay 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 obligation by means of administrative wage garnishment in the amount of \$175 bi-weekly.



H. Alexander Manuel
Administrative Judge