

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

In the Matter of:

MONICA MCNEILL,

Petitioner.

HUDOHA 13-AM-0084-AG-034

Claim No. 0976571 Oak 9249

June 17, 2013

Decision and Order

On February 8, 2013, Monica McNeill (“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”). 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 Court have been designated to determine whether the HUD Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioners, thereafter, must 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). In addition, Petitioners may present evidence that the terms of the repayment schedule are unlawful, would cause an undue financial hardship to Petitioners, or that collection of the debt may not be pursued due to operation of law. *Id.*

Pursuant to 31 C.F.R. § 285.11(f)(10)(ii), on February 13, 2013, 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”), dated Feb. 13, 2013.)

Background

On July 18, 1996, Petitioner executed and delivered a Retail Installment Contract-Security Agreement (“Note”) to Victory Homes Inc. in the amount of \$34,552.00, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed March 11, 2013); Exhibit A, Note.) Contemporaneously, the Note was assigned to Oakwood Acceptance Corp. (*Id.*, at ¶ 3; Note, at 1, 2.) Oakwood was defaulted as an issuer of Mortgage Backed Securities due to its failure to comply with the Government National Mortgage Association’s (“GNMA’s”) MBS program

requirements. (Sec’y Stat., ¶ 4; Exhibit B, Declaration of Leslie A. Meaux¹, (“Meaux Decl.”) ¶ 4.) Upon default by Oakwood, all of its rights, title, and interest in Petitioner’s loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Oakwood and GNMA. (Sec’y Stat., ¶ 5.) As GNMA is a division of HUD, the Secretary is the rightful holder of the Note. (Sec’y Stat., ¶ 6; Meaux Decl., ¶ 5.) The Secretary contends that the Petitioner is currently in default on the Note. (Sec’y Stat., ¶ 7.)

The Secretary has made efforts to collect the alleged debt from Petitioner, but has been unsuccessful. (*Id.*, ¶ 7; Meaux Decl., ¶ 6.) The Secretary therefore alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$20,680.13² as the unpaid principal balance; and
- (b) interest, penalties, and administrative costs on the principal balance from March 6, 2013, until paid.

(Sec’y Stat., ¶ 7; Meaux Decl., ¶ 6.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Garnishment Notice”), dated August 28, 2012³, was sent to Petitioner. (Sec’y Stat., ¶ 8; Meaux Decl., ¶ 7.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a repayment agreement with HUD under mutually agreeable terms. (Sec’y Stat., ¶ 9; Meaux Decl., ¶ 7.) To date, Petitioner has not entered into a written repayment agreement. (Sec’y Stat., ¶ 9; Meaux Decl., ¶ 7.)

Based on Petitioner’s claim of financial hardship, the Secretary proposes a reduced garnishment amount of 10% of Petitioner’s disposable income. (Sec’y Stat., ¶ 11; Meaux Decl., ¶ 9.)

Discussion

The Secretary bears the initial burden of proof to show the existence and amount if the alleged debt. 31 C.F.R. § 285.11 (f)(8)(i). Petitioner, thereafter, must show by a preponderance

¹ Leslie A. Meaux is the Director of GNMA’s Mortgage-Backed Securities Monitoring Division.

² There is some ambiguity about the actual amount of the current debt. The Garnishment Notice identified the debt as \$30,218.41, with a principal balance of \$23,244.98, as of August 28, 2012. Petitioner’s Hearing Request also repeats this debt amount. The Secretary’s Statement, however, lists the principal amount at only \$20,680.13. Moreover, both the Hearing Request and a letter filed by Petitioner on April 15, 2013, indicate that Petitioner is already experiencing a garnishment of her wages. The existence of an on-going wage garnishment could explain the discrepancy between the principal balance amounts, but the Secretary’s Statement omits any mention of such a garnishment. The Court therefore has no information about if or when a wage withholding order was issued. If such an order was issued, HUD has not disclosed how much of the debt has been recovered, or what the garnishment rate is. The amount of \$20,680.13 is therefore determined to be the current unpaid principal balance.

³ Both the Meaux Declaration and the Garnishment Notice itself identify August 28, 2012 as the date the Garnishment Notice was sent. The Secretary’s Statement, however, lists the date of the Garnishment Notice as May 20, 2008. It is unclear what this date refers to.

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. 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 the sworn testimony of the Director of GNMA's MBS Monitoring Division. (See Sec'y Stat.; Ex. A; Ex. B.) I find that the Secretary has therefore met his 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 Feb. 8, 2013.) Rather, she contests the amount of the debt and asserts that a garnishment in the amount requested by the Secretary will create a significant financial hardship. Specifically, in her *Hearing Request*, Petitioner checked the box marked "Garnishment Amount-I dispute the amount of the proposed garnishment," claiming that "15% is being garnished for [sic] my check as well as my husbands and it is really putting us in a bind." (Pet'r's Hrg. Req.)

In the *Notice of Docketing*, this Court stated that Petitioner may "present evidence that the terms of the repayment schedule are unlawful or would cause a financial hardship to Petitioner." (Notice of Docketing, issued Feb. 13, 2013.) Petitioner failed to respond to the *Notice of Docketing*. This Court then issued a second *Order* that notified Petitioner that her response was past due and directed her to file documentary evidence on or before April 18, 2013. (Order, issued March 27, 2013.) The *Order* instructed Petitioner that proof of financial hardship:

"[m]ust consist of pay statements and proof of actual payment necessary of household expenses, e.g. receipts, bank statements, and copies of checks, money orders, etc. for payment of mortgage, rent, food, transportation, necessary medical expenses, and other basic household necessities."

Id.

The *Order* stated that, "[f]ailure to comply with this Order may result in ... the entry of judgment based on the documents of record." Id. (emphasis in original). To date, the only evidence filed by is her Consumer Debtor Financial Statement, which consists entirely of listed expenses. As such, it is only of limited value to prove financial hardship. I therefore find that Petitioner remains obligated to repay the instant debt, and has not shown that a garnishment will cause a financial hardship.

Lastly, in Petitioner's April 15, 2012, letter, she explains that "due to fees and penalties ... that were attached to the loan at the beginning of the default process ... the balance owed nearly doubled to \$45,024.71." (Petitioner's Letter, filed April 15, 2013.) In addition, Petitioner suggests that she is willing to enter into a settlement plan to pay the balance owed on the alleged debt and asks HUD to "take a look at these figures, the amount that we've paid to date, and consider cancelling the remaining portion of the debt." (Pet'r's Ltr.)

This Court is not authorized to extend, recommend, or accept any payment or settlement offer on behalf of HUD. Petitioner may wish to discuss this matter with counsel for the Secretary or contact Lester J. West, Director, HUD Albany Financial Operations Center,

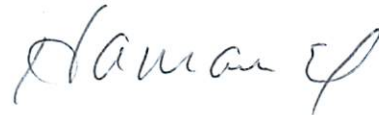
Corporate Circle, Albany, NY 12203-5121 at 1-800-669-5152, extension 4206. Petitioner also “[M]ay at any time, request a review by the agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.” 31 C.F.R. § 285.11(k)(1).

I find that Petitioner is indebted to HUD in the amount of \$20,680.13 as the unpaid balance due as of March 11, 2013, plus interest as claimed by the Secretary.

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 the subject debt by means of administrative wage garnishment in the amount of 10% of Petitioner’s disposable pay.



H. Alexander Manuel
Administrative Judge