

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

In the Matter of:

RIETTA L. WOODS,

Petitioner

HUDOA No: 13-AM-0088-AG-037
Claim No. 1005504051

June 18, 2013

DECISION AND ORDER

On January 23, 2013, Rietta L. Woods ("Petitioner") requested a hearing concerning the existence, amount or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary"). 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 by debtors.

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. § 17.81. Pursuant to 31 C.F.R. § 285.11(f)(4), on February 20, 2013, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), issued February 20, 2013.)

Background

The Secretary states that on May 26, 1992, Petitioner executed and delivered a Retail Installment Contract ("Note") to WJC Enterprises, doing business as Leader Homes, in the amount of \$15,833.00, that 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 19, 2013; Ex. A, Note.) Petitioner incurred this debt for the purchase of a manufactured home. (Sec'y Stat. Ex. A.) Contemporaneously, on May 26, 1992, the Note was assigned by WJC Enterprises, doing business as Leader Homes, to Logan-Laws Financial Corporation ("Logan-Laws"). (Sec'y Stat. ¶ 3.) Subsequent to this assignment, Logan-Laws was defaulted as an issuer of mortgage-backed securities due to its failure to comply with the Government National Mortgage Association's ("GNMA") Mortgage-Backed Securities Program requirements.

(Sec'y Stat. ¶ 4; Ex. B, Declaration of Leslie A. Meaux¹, ("Meaux Decl."), ¶ 4.) Upon default by Logan-Laws, all of its rights, title, and interest in Petitioner's loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Logan-Laws and GNMA. (Sec'y Stat. ¶ 5; Meaux Decl. ¶ 4.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec'y Stat. ¶ 6; Meaux Decl. ¶ 5.)

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. (Sec'y Stat. ¶ 7; Meaux Decl. ¶ 6.) As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$12,571.42 as the unpaid principal balance;
- b) \$9,954.17 as the unpaid interest on the principal balance at 13% per annum through March 19, 2013; and,
- c) interest on said principal balance at 13% per annum from March 20, 2013, until paid.

(Sec'y Stat., ¶ 7; Meaux Decl., 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Garnishment Notice"), dated November 10, 2011, was mailed to Petitioner, in accordance with 31 C.F.R. 285.11(e). (Sec'y Stat., ¶ 8; Meaux Decl., ¶ 7.) 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., ¶ 9; Meaux Decl., ¶ 7.) The record does not show that Petitioner has entered into such an agreement. (See Meaux Decl., ¶ 7.) Accordingly, the Secretary proposes a repayment schedule of 12% of Petitioner's disposable pay. (Sec'y Stat., ¶ 13; Meaux Decl., ¶ 8.)

Discussion

Petitioner contends that she does not owe the debt claimed by the Secretary because she received a Certificate of Title releasing the lender/assignor's lien on the title to the mobile home that she purchased in connection with the debt in this case.² (Pet'r's Hr'g Req., filed February 19, 2013.) Specifically, she claims, "...the account should be closed. I have the Certificate of Title from OFORI Lending Services." (Pet'r's Hr'g Req.) In support of Petitioner's argument, Petitioner attached the Certificate of Title. (Pet'r's Hr'g Req., unmarked exhibit)

The Secretary bears the initial burden of proof to show 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 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. 31 C.F.R. § 285.11(f)(8)(ii). As evidence of the existence of the debt, the Secretary has filed a statement

¹ Leslie A. Meaux is the Acting Monitoring Director of the Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association at HUD.

² Petitioner initially stated in her Hearing Request that she disputes the amount of the debt, however, she does not has not provided documentary evidence to support her position.

supported by documentary evidence, including a copy of the Note and the sworn testimony of the Acting Monitoring Director of the Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association at HUD. (See Sec'y Stat., Ex. A, Ex. B.) Accordingly, the Court finds the Secretary has met his initial burden.

The burden therefore shifts to Petitioner to prove that she does not owe the debt. In order to prove that she is not liable for the debt, Petitioner must file documentary evidence of a written release from the lender specifically discharging Petitioner's debt, or valuable consideration paid to HUD, that would indicate an intent to release. Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003); Cecil F. & Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); Jesus E. & Rita de los Santos, HUDBCA No. 86-1255-F262 (Feb. 28, 1986). In order for the discharge to be valid, the surrender of the Note must be accompanied by evidence of an intent to discharge Petitioner from the debt. See G.E. Capital Mortg. Servs., Inc. v. Neely, 519 S.E.2d 553, 557 (N.C. Ct. App. 1999).

Petitioner argues that the Certificate of Title attached to her Hearing Request somehow absolves her of her obligation to repay the debt in this case. Although the Certificate of Title did indeed evidence the release of the lender/assignor's lien on the title – the Certificate of Title, in no way, released Petitioner from the obligation to repay the Note that she entered into in order to finance the purchase of the manufactured home at issue in this case. Indeed, Petitioner was specifically informed of this fact by the lender/assignor when the lien was released:

The release of lien on the title does not eliminate your outstanding debt on your home. Only the lien on the mobile home has been released. The investor reserves any and all rights to collect on the outstanding balance pursuant to your original contract and signed personal promise to pay.

(Sec'y Stat. Ex. C).

Petitioner did not file additional evidence beyond the Certificate of Title in support of her allegations despite having been ordered to do so on two separate occasions. (Notice of Docketing, p. 2; Order, dated May 1, 2013.) As noted above, a copy of the Certificate of Title is insufficient to prove the existence of a valid release of Petitioner's obligation to repay the indebtedness in this case. Accordingly, the Court finds that Petitioner's argument fails for lack of credible evidence, and that the debt is past due and enforceable in the amount claimed by the Secretary. See Troy Williams, HUDOA No. 09-M-CH-A WG52, (June 23, 2009) ("assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.")

ORDER

For the reasons set forth above, the Order dated February 20, 2013, 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 in the amount of 12% of Petitioner's disposable pay.

A handwritten signature in black ink, appearing to read "H. Alexander Manuel", written in a cursive style.

H. Alexander Manuel
Administrative Judge