

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

In the Matter of:

Tara Byers,

Petitioner.

HUDOHA No. 13-AM-010-AG-6

Claim No. 7708764380B

February 11, 2013

DECISION AND ORDER

On October 10, 2012, 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.

APPLICABLE LAW

The administrative judges of this Court have been designated to determine whether the 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). Petitioner, 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, 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.*

Background

On or about April 15, 1995, Tara Byers (“Petitioner”) executed and delivered to Master Financial, Inc. a Note (“Note”) evidencing a debt of \$25,000.00. (Secretary’s Motion to Dismiss (“Sec’y Mo. to Dismiss”), ¶ 2, Ex. 1.) The Note was insured against nonpayment by HUD pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec’y Mo. to Dismiss, ¶ 2.) Petitioner failed to make payments as agreed under the Note, and the Note was subsequently assigned to HUD. (Sec’y Mo. to Dismiss., ¶ 4, Ex. 1, 2; Declaration of Brian Dillon (“Dillon Decl.”) ¶ 3.)

HUD has attempted to collect the amount due under the Note, but Petitioner remains delinquent. (Sec'y Mo. to Dismiss, ¶ 5; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$14,769.734 as the unpaid principal balance as of October 12, 2012;
- (b) \$0.00 as the unpaid interest on the principal balance at 5.0% per annum through October 12, 2012; and
- (c) Interest on said principal balance from October 13, 2012, at 5% per annum until paid.

(Sec'y Mo. to Dismiss ¶ 8; Dillon Decl., ¶ 4.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated January 22, 2009, was mailed to Petitioner. (Sec'y Mo. to Dismiss, ¶ 6; Dillon Decl., ¶ 5.) In accordance with 31 C.F.R. § 285.11 (e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under mutually agreeable terms. (*Id.* at ¶ 6.) Petitioner did not enter into a repayment agreement or pay the debt in full at that time. *Id.*

A Wage Garnishment Order dated February 26, 2009, was sent to Petitioner's employer and Petitioner's pay was garnished 80 times for a total of \$13,293.57. (Sec'y. Mo. to Dismiss ¶ 7; Dillon Decl. ¶¶ 7-8.)

Petitioner requested a reduced garnishment amount of \$35.00 twice a month and HUD consents to this request. (Sec'y. Mo. to Dismiss ¶ 9; Dillon Decl. ¶9.)

Discussion

The Secretary has the initial burden of proof to show the existence and amount of the debt that is the subject of this case. 31 C.F.R. § 285.11 (f)(8)(ii). Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), if Petitioner disputes the existence or amount of debt the Petitioner "must present, by a preponderance of the evidence, that no debt exists or that the amount of debt is incorrect." In addition, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, would cause 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 Motion to Dismiss supported by statements of the Secretary's case and documentary evidence, including the sworn testimony of the Director of HUD's Asset Recovery Division, and a copy of the Note, setting forth corroborated evidence of Petitioner's debt to HUD. I find that the Secretary has therefore met his initial burden of proof.

Petitioner does not dispute the existence or enforceability of the debt. (Petitioner's Hearing Request ("Petr's Hrg. Req."), filed October 10, 2012.) Rather, she asserts that a garnishment in the amount previously garnished by the Secretary will create a significant

hardship. In her Hearing Request, Petitioner states “I am a single mom in extreme financial hardship...my monthly income is still less than my basic bills, [j]ust having food in the house is difficult. Another financial arrangement would be more realistic in helping my familys(sic) daily needs.” (Petr’s Hrg. Req.) Further, Petitioner states that she is “requesting a reduction in payments to \$35.00 a paycheck...[a]s things get better I may be able to pay more.” (Sec’y. Mo. to Dismiss, Ex. A).

The Secretary has consented to Petitioner’s proposal to be garnished in the amount of \$35.00 twice a month. (Sec’y. Mo. to Dismiss ¶ 9.)

As the Petitioner does not dispute the existence of the debt, the Court finds the debt to be legally enforceable and past due. Further, as the Secretary accepts Petitioner’s proposed reduction in garnishment amount, it is hereby ordered that the Secretary may garnish the Petitioner’s wages in the amount of \$35.00 twice monthly.

ORDER

For the reasons set forth above, I find that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative wage garnishment in the amount of \$35.00 per bi-weekly pay period for a total of no more than \$70.00 per month. It is

FUTHER ORDERED, as the Court has reached a decision in this matter, the Secretary’s Motion to Dismiss is **DENIED** as moot.

/s/

H. Alexander Manuel
Administrative Judge