

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

In the Matter of:

SHARON ALDRICH,

Petitioner

HUDOHA No. 13-AM-0107-AG-047

Claim No. 7801191180A

July 11, 2013

DECISION AND ORDER

Sharon M. Aldrich (“Petitioner”) was notified that pursuant to 31 C.F.R. § 285.11(e) and 31 U.S.C. § 3720D, the Secretary of the U.S. Department of Housing and Urban Development (“HUD”) intended to garnish the disposable pay of Petitioner in order to satisfy Petitioner’s alleged debt to HUD.

On April 9, 2013, Petitioner requested a hearing concerning a proposed administrative wage garnishment in relation to a debt allegedly owed to 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 Office of Hearing and Appeals has been designated to conduct a hearing to determine whether the debt is legally enforceable. 31 C.F.R. § 285.11. The Secretary has the initial burden of proof to show both the existence as well as the amount of the alleged debt. 31 C.F.R. 285(f)(8)(i). 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.* As a result of Petitioner’s hearing request, referral of the debt to the U.S. Department of the Treasury for the administrative offset was temporarily stayed by the Court on April 9, 2013, until the issuance of a written decision by the Administrative Judge. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated April 9, 2013.)

Background

On or about September 10, 1996, Petitioner executed and delivered a North Carolina Retail Installment Contract & Truth in Lending Disclosure (“Note”) to Great South Builders, Inc. in the amount of \$6937.17, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (“Sec’y Stat.”) ¶ filed April 17, 2013; Ex. A, Note.) Contemporaneously, on September 10, 1996, the Note was assigned by Great South Builders, Inc. to Empire Funding Corp. (Sec’y Stat. ¶ 3.) on September 4, 1997, the Note was assigned by Empire Funding Corp. to Amerus Bank. (Sec’y Stat. ¶ 4; Ex. B.) Petitioner failed to make payment on the Note as agreed. (Sec’y Stat. ¶ 5.)

Consequently, in accordance with 24 C.F.R. § 201.54, Green Tree Financial Corporation f/k/a Amerus Bank assigned the Note to the United States of America on February 23, 1999. Id. The Secretary is the holder of the note on behalf of the United States. Id.

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. (Sec'y Stat. ¶ 6, Declaration of Brian Dillon ("Dillon Decl.") ¶ 4.) The Secretary contends that Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$6,219.25 as the unpaid principal balance as of April 11, 2013;
- (b) \$9.46 as the unpaid interest on the principal balance at 5% per annum through April 11, 2013; and
- (c) interest on said principal balance from April 12, 2013 at 5% per annum until paid.

(Sec'y Stat. ¶ 6, Dillon Decl. ¶ 5.)

A *Notice of Intent to Initiate Administrative Wage Garnishment Proceedings* ("Notice") dated February 13, 2013 was mailed to Petitioner. (Sec'y Stat. ¶ 7, Dillon Decl. ¶ 5.) The Notice was returned to HUD by the United States Postal Service marked "unclaimed." (Dillon Decl. ¶ 5; Exhibit A.) Petitioner was afforded the opportunity to enter into a written repayment agreement under mutually agreeable terms in accordance with 31 C.F.R. § 285.11(e), however Petitioner did not enter into a repayment agreement or pay the debt in full based on the February 13, 2013 Notice. (Sec'y Stat. ¶ 8, Dillon Decl. ¶ 6.)

Discussion

The Secretary has the initial burden of proof to show both the existence as well as the amount of the alleged debt. 31 C.F.R. 285(f)(8)(i). 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. The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the claimed amounts.

Here, Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims she did not receive notice as required by federal regulation and that repayment of the debt as proposed by the Secretary would create a financial hardship. On or about April 9, 2013, Petitioner requested a hearing concerning the existence, amount, or enforceability of the debt to HUD. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), received April 9, 2013.) In her *Hearing Request*, Petitioner claims that "I didn't receive notice of the Administrative Wage Garnishment Procedure," and requests that the Administrative Wage Garnishment be stopped. (Pet'r's Hr'g Req.)

Pursuant to 31 C.F.R. § 285.11(e), actual receipt of the Notice is not required. Rather, the Secretary is only required to send the Notice to Petitioner's last known address via first class mail. 31 C.F.R. § 285.11(e). The Secretary claims that the Notice was sent to the address where Petitioner currently resides via certified first class mail, and has attached a copy of the Notice

and envelope addressed to Mrs. Sharon Aldrich at 2215 Glendale Ave., Kannapolis, NC 28081. (Sec'y Stat. ¶ 7, Exhibit A.) The address that the Notice was sent to is identical to the one that the Petitioner used as her mailing address in her *Hearing Request*. (Pet'r's Hr'g Req.) Since a review of the record shows that the Secretary did in fact send Notice to Petitioner's address via first class mail, the Court finds the Secretary met the Notice requirements under 31 C.F.R. § 285.11(e) despite the Notice being returned to HUD by the United States Postal Service marked as "unclaimed." In addition, Petitioner clearly received the information contained in the Notice since she filed her Hearing Request six weeks after the Notice was sent to her. (Pet'r's Hr'g Req.)

Petitioner also claims that repayment of the debt in the manner proposed by the Secretary has caused her financial hardship. Specifically, Petitioner states, "I respectfully request that the garnishment be stopped due to the fact my husband and I separated in Dec 2012 due to domestic violence. I have been paying all household expenses [and]...all other debts including this one." (Pet'r's Hr'g Req.) Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship to the Petitioner. 31 C.F.R. § 285.11(f)(8)(ii).

In support of her argument, Petitioner filed, a pay statement reflecting a bi-weekly pay of \$1,257.07. After making deductions for federal income tax withholding, state tax withholding, FICA, Medicare, and health insurance, Petitioner's disposable pay totals \$1,035.18 bi-weekly or \$2,070.36 monthly.

Petitioner also submits her rental agreement, and copies of monthly bills and expenses in support of her claim. (Pet'r's Doc. Evid.) Petitioner's evidence indicates Petitioner has the following essential monthly household expenses: rent, \$650; electric bill, \$144.66; cellular phone, \$150.56; car loan, \$451.12; Regional Finance Corporation loan payment, \$95.00; and National Finance Company payment, \$78.00. Petitioner also submits a JCP and Belk Rewards summary of account activity, however these are excluded as they do not indicate recurring essential monthly expenses. Petitioner also submits a bill for digital cable, basic internet, digital home phone unlimited nationwide, voice mail, and internet modem lease at the cost of \$117.48, however, these expenses are not considered necessary and are thus excluded.¹ Accordingly, the Court finds Petitioner's essential monthly expenses total \$1,569.34.

Petitioner's disposable pay of \$2,070.36 minus her essential household expenses of \$1,569.34 leaves her with a balance of \$501.02 monthly. A garnishment rate of 15% of Petitioner's disposable pay or \$310.55, would leave Petitioner with \$190.47 to meet any additional household expenses. Accordingly, I find that Petitioner has not met her burden to prove that repayment in the amount proposed by the Secretary would cause her financial hardship.

Conclusion

Upon consideration, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. I further find that the

¹ The Court will generally credit a petitioner with either the cost of a home phone or a cell phone, but not both. In this case, Petitioner was credited with the cost of her cell phone bill as it is the higher of the two expenses.

Secretary has clearly shown that the issuance of a wage garnishment order to achieve repayment of this outstanding debt is justified.

ORDER

For the reasons set forth above, the Order imposing the 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 seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of fifteen (15) percent of Petitioner's disposable income.

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

H. Alexander Manuel
Administrative Judge