

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

In the Matter of:

REBECCA L. KOGUT,

Petitioner

HUDOHA No. 13-AM-0128-AG-056

Claim No. 780742141-0A

November 7, 2013

DECISION AND ORDER

On June 3, 2013, Rebecca L. Kogut (“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”).¹ 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. On June 3, 2013, pursuant to 31 C.F.R. § 285.11(f)(4), an issuance of any new wage garnishment order against Petitioner was stayed while this case is pending before this Office. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), issued June 3, 2013.)

Background

The Secretary states that, on or about June 18, 2008, Petitioner executed and delivered a Retail Installment Contract Security Agreement (“Note”) in the amount of \$32,749.72 to Luv Homes Jacksonville FL. (Secretary’s Statement (“Sec’y Stat.”), Ex. A, Declaration of Gary Sautter, Acting Director, Asset Recovery Division, HUD Financial Operations Center, ¶3); Rebecca L. Kogut, HUDOHA No. 13-AM-0038-AG-014 (March 28, 2013), at 1.) The Note was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12

¹ Petitioner’s hearing request filed on June 3, 2013 appears to relate to the same debt underlying the administrative wage garnishment decision and order issued by the Court in *Rebecca L. Kogut*, HUDOHA No. 13-AM-0038-AG-014, Claim No. 780742141-0A (March 28, 2013). The claim number for the debt in that case is identical to the claim number for the debt in this case. Petitioner does not deny owing the debt in this case. However, Petitioner has now come forward with additional evidence to support her claim of financial hardship. Accordingly, a new decision and order reaffirming the March 28, 2013 decision and order in the main, is issued, that also takes into consideration Petitioner’s evidence of financial hardship.

U.S.C. § 1703. The Note was contemporaneously assigned to Vanderbilt Mortgage and Finance, Inc., and later, upon Petitioner's default, assigned to the United States of America. (Sec'y Stat., Ex. A, ¶3). The Secretary is the holder of the Note on behalf of the United States. Id.

The Secretary's attempts to collect the debt have been unsuccessful. (Sec'y Stat., Ex. A, ¶4). Accordingly, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$9,327.64 as the unpaid principal balance as of May 31, 2013;
- (b) \$7.77 as the unpaid interest on the principal balance at 1% per annum through May 31, 2013;
- (c) \$701.45 as the unpaid penalties and administrative costs as of May 31, 2013; and
- (d) interest on said principal balance from June 1, 2013 at 1% per annum until paid.

(Sec'y Stat., ¶5; Ex. A. Declaration of Gary Sautter ("Sautter Decl."), ¶4.)

A Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings dated October 8, 2012 was sent to Petitioner. (Sautter 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 terms agreeable to HUD. (Id. at ¶6.) To date, Petitioner has not entered into a repayment agreement based on the October 8, 2012 Notice. (Id. at ¶7.)

On October 31, 2012, Petitioner filed a request for hearing concerning a proposed administrative wage garnishment related to this debt. (Id. at ¶8.) The Court issued a Decision and Order on the debt in this case on March 28, 2013, authorizing the Secretary to seek collection of the indebtedness to HUD by means of administrative wage garnishment. (Sec'y Stat., ¶2; Sautter Decl. ¶8.)

A Wage Garnishment Order was issued to Petitioner's employer on April 15, 2013. (Sec'y Stat., ¶3; Sautter Decl. ¶9). As of June 18, 2013, Petitioner's wages have been garnished three times. The three garnishments are as follows: \$72.17 on May 17, 2013; \$73.56 on June 3, 2013 and \$258.09 on June 10, 2013. (Sec'y Stat., ¶3; Sautter Decl. ¶10). The first garnishment is reflected in the balance on Petitioner's account, while the second and third garnishments, totaling \$331.65, have not been credited to Petitioner's account. (Sec'y Stat., ¶3; Sautter Decl. ¶10).

Based upon Petitioner's pay statement for the period from May 23, 2013 to May 29, 2013, the Secretary suggests a proposed repayment schedule of \$82.81 weekly or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶6; Sautter Decl. ¶11).

Discussion

Petitioner does not dispute the existence or amount of the alleged debt. Rather, Petitioner maintains that the Secretary's proposed repayment schedule will create a financial hardship.

(Petitioner's Letter ("Pet'r's Letter"), filed June 3, 2013.) Per 31 C.F.R. § 285.11(f)(8)(ii), Petitioner "may present evidence that the terms of the repayment schedule . . . would cause a financial hardship." Although such financial hardship will not entirely relieve Petitioner of the debt owed to HUD, this Court may consider any information Petitioner submitted and "downwardly adjust, by an amount and for a period of time agreeable to the agency, the amount garnished to reflect the debtor's financial condition." 31 C.F.R. § 285.11(k)(3).

In support of her position that the Secretary's proposed repayment schedule would result in a financial hardship, Petitioner has submitted several financial documents to this Court. The documents submitted by Petitioner indicate that she has monthly expenses in the following amounts: apartment and furniture rental, \$928.14; utility, \$165; gas \$70; children's insurance, \$21.50; and food, \$400. (Petitioner's Documentary Evidence ("Pet. Ev. I"), filed September 17, 2013.)

This Court has previously held that reasonable credit may be given for certain monthly living expenses such as food, rent, and utilities when determining whether a proposed wage garnishment will result in a financial hardship for Petitioner. See Elva and Gilbert Loera, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004). Although the standard of reasonable credit is necessarily fact-sensitive and not etched in stone, this Court has made it clear that Petitioner will only be given credit for essential household expenses. See Gary Cannady, HUDOA No. 08-M-CH-AWG26 (June 12, 2009).

As Petitioner claims her two children as dependents, Petitioner will be given credit for \$400 for monthly food expenses, which is generally supported by the bank statement she submitted to prove payment for essential household expenses. (Pet'r's Letter; Pet. Ev. I.) Petitioner will also be given credit for apartment and furniture rental, utility, gas, and children's insurance for the amounts listed because she submitted documents showing that these expenses were actually incurred in the amount she claimed. (Pet. Ev. I.) However, Petitioner's expenses for auto repair and visit to doctor's office will not be credited, as she failed to prove these expenses to be recurring monthly expenses. Petitioner's expenses for credit card payment will also not be credited, as she did not demonstrate, with specificity, that the charges were for essential household expenses. In addition, Petitioner's expenses for cable/satellite TV, clothing and other non-essential items will not be fully credited towards Petitioner's expenses. As a result, the sum of Petitioner's allowable monthly expenses amounts to \$1734.64.

Petitioner also submitted a copy of her pay statement for the period from August 29, 2013 to September 11, 2013. (Pet. Ev. I.) Based on this pay statement, Petitioner's disposable income is \$478.28 weekly or \$1913.12 monthly. After deducting Petitioner's allowable monthly expenses of \$1734.64 from this adjusted disposable monthly income of \$1913.12, she is then left with \$178.48 for any additional expenses that may arise each month.

If the Secretary's proposed garnishment rate of 15% of Petitioner's disposable pay is allowed, Petitioner is left with a negative balance of -\$108.49 monthly. This would create an obvious financial hardship for Petitioner. A 10% garnishment rate would lower Petitioner's amount and result in Petitioner having a balance of -\$22.83 monthly. As a single mother of two children who is likely to incur additional and unforeseeable expenses such as the auto repair

expenses that were denied in the calculus above, even a garnishment at the 5% rate would create a financial hardship, leaving Petitioner with a monthly balance of only \$82.82.

This Court reaffirms its previous finding that Petitioner is indebted to HUD in the amounts claimed by the Secretary. And while the Secretary has successfully established the legal enforceability of the debt that is the subject of this proceeding, Petitioner has demonstrated that repayment of this debt, in the amount and manner proposed by the Secretary, would create a financial hardship sufficient to justify a stay of referral of this matter for collection at this time.

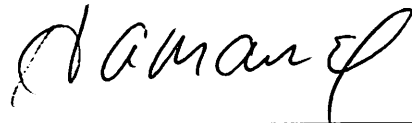
ORDER

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 **STAYED, INDEFINITELY**. It is hereby

ORDERED that the Secretary is not authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at this time.

Petitioner is notified, however, that the Secretary is free to reinstitute these proceedings, in the future, if Petitioner's financial circumstances change or otherwise warrant such action.

SO ORDERED.



H. Alexander Manuel
Administrative Judge