

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

In the Matter of:

**BRITTANY SMITH,**

Petitioner

HUDOHA No. 13-AM-0133-AG-058

Claim No. 2009152259A

November 21, 2013

**DECISION AND ORDER**

On June 12, 2013, Brittany Smith ("Petitioner") filed a hearing request 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. As of June 17, 2013, and pursuant to 31 C.F.R. § 285.11(f)(4), the issuance of any new wage garnishment order against Petitioner has been stayed while this case is pending before this Office. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), issued June 17, 2013.)

**Background**

The Secretary states that, on or about June 24, 2004, Petitioner executed and delivered to 21<sup>st</sup> Mortgage Corp., a Retail Installment Contract and Security Agreement ("Note") in the amount of \$23,312.00. (Secretary's Statement ("Sec'y Stat.") ¶2, filed July 18, 2013.) The Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. (Sec'y Stat., ¶3; Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center, ("Dillon Decl."), ¶3.) Petitioner failed to make payments as agreed in the Note and the Note was assigned to HUD. (Sec'y Stat., ¶4; Dillon Decl., ¶3.)

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. (Sec'y Stat., ¶5; Dillon Decl., ¶4.) As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$11,082.71 as the unpaid principal balance as of May 30, 2013;

- (b) \$2,202.13 as the unpaid interest on the principal balance at 3% per annum through May 30, 2013;
- (c) \$3,161.31 as the unpaid penalties and administrative costs through May 30, 2013; and
- (d) interest on said principal balance from June 1, 2013 at 3% per annum until paid.

(Sec'y Stat., ¶6; Dillon Decl., ¶4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Garnishment Notice"), dated May 3, 2013, was mailed to Petitioner, in accordance with 31 C.F.R. § 285.11(e). (Sec'y Stat., ¶7; Dillon Decl., ¶5.) 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). (Dillon Decl., ¶6.) However, the record does not show that Petitioner has entered into such an agreement. (Sec'y Stat., ¶9; Dillon Decl., ¶7.) Accordingly, the Secretary proposes a repayment schedule of \$480.00 per month, to liquidate Petitioner's debt in approximately three years, as recommended by the Federal Claims Collection Standard, or 15% of Petitioner's disposable income. (Sec'y Stat., ¶10; Dillon Decl., ¶7.)

### Discussion

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 or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). Additionally, 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 evidence of Petitioner's indebtedness, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note signed by Petitioner, the sworn declaration of the Director of the Asset Recovery Division, Financial Operations Center at HUD, and the assignment of contract between Petitioner and 21<sup>st</sup> Mortgage Corp. (See Sec'y Stat., Ex. 1, Ex. 2, Ex. 3.) Accordingly, the Court finds the Secretary has met his initial burden.

Petitioner disputes the amount of the debt. However, Petitioner does not provide documentary evidence to prove that she does not owe the full amount of the debt claimed by the Secretary. (Petitioner's Hearing Request, filed June 1, 2013.) In addition, Petitioner filed no documentary evidence in this case beyond the filing of her Hearing Request in support of her allegations. The Notice of Docketing, as well as the Order for Documentary Evidence, dated August 8, 2013, ordered Petitioner to file documentary evidence to prove that she did not owe the alleged debt, in the amount claimed by the Secretary, or to prove that the proposed repayment schedule by HUD would impose a financial hardship upon Petitioner. (Notice of Docketing, 2; Order for Documentary Evidence, dated August 8, 2013.) Petitioner failed to file such evidence despite having been ordered to do so on two separate occasions.

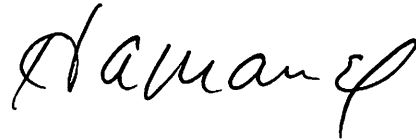
Accordingly, the Court finds that Petitioner's argument fails for lack of corroborating evidence, and that the debt is past due and enforceable in the amount claimed by the Secretary. See Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) ("assertions without

evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.”) Having filed little or no documentary proof to demonstrate financial hardship, the Court further finds that Petitioner has not demonstrated that repayment of the debt according to the Secretary’s proposed repayment schedule would create a financial hardship for her. See Judith Herrera, HUDOA No. 12-M-CH-AWG27 (July 13, 2012.)

### **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 15% of Petitioner’s disposable income.

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

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H. Alexander Manuel  
Administrative Judge