

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

In the Matter of:

Brandy T. Baker,

Petitioner.

HUDOHA 13-VH-0062-AG-24
Claim No. 780741515

March 21, 2013

DECISION AND ORDER

On December 7, 2012, Petitioner filed a request for hearing to contest the administrative wage garnishment of her disposable pay in relation 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 collection of debts owed to the United States government.

Applicable Law

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. This hearing 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. 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 any 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.

Procedural Background

Pursuant to 31 C.F.R. § 285.11(f) (4), on December 7, 2012, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral ("Notice of Docketing"), 2). On December 14, 2012, the Secretary filed his Statement along with documentation in support of his position. To date, Petitioner has failed to submit documentary evidence in support of her position. (See Notice of Docketing; Order for Documentary Evidence, dated January 23, 2013; and Order to Show Cause, dated February 20, 2013.) Based on the documents in the record of this proceeding, this case is now ripe for review.

Background

On March 8, 2006, Petitioner executed and delivered a Retail Installment Contract-Security Agreement ("Note") to Clayton Hampstead a/k/a CMH Homes, Inc., in the amount of \$33,886.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act. (Secretary's Statement ("Sec'y. Stat.") ¶ 2, filed December 14, 2012; Ex. A, Note.) Contemporaneously, the Note was assigned to Vanderbilt Mortgage and Finance, Inc. (Sec'y. Stat., ¶ 3; Note, at 5.) Petitioner failed to make payments as agreed in the Note. (Sec'y. Stat., ¶ 4.) Consequently, and in accordance with 24 C.F.R. § 201.54, Vanderbilt Mortgage and Finance, Inc. assigned the Note to the United States of America. (Sec'y. Stat., ¶ 4; Ex. B, Assignment; Declaration of Brian Dillon¹ ("Dillon Decl.", ¶ 3.) The Secretary is the holder of the Note on behalf of the United States of America. (Sec'y. Stat., ¶ 4; Dillon Decl., ¶ 3.)

The Secretary has attempted to collect this debt from Petitioner, but has not been successful. (Sec'y. Stat., ¶ 5; Dillon Decl., ¶ 4.) As a result, Petitioner remains in default on the note and is indebted to the Secretary in the following amounts:

- (a) \$26,004.59 as the unpaid principal balance as of November 30, 2012;
- (b) \$1,376.19 as the unpaid interest on the principal balance at 1% per annum through November 30, 2012; and
- (c) \$1,331.91 as the unpaid penalties and \$35.33 as the unpaid administrative costs as of November 30, 2012; and
- (d) interest on said principal balance from December 1, 2012 at 1% per annum until paid.

(Sec'y. Stat., ¶ 5; Dillon Decl., ¶ 4)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated August 8, 2012 was sent to Petitioner. (Sec'y. Stat., ¶ 6; Dillon Decl., ¶ 5.) Pursuant to 31 C.F.R. § 285.11(e) (2) (ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms, but as of the date of this Decision has failed to do so. (Sec'y. Stat., ¶ 7; Dillon Decl., ¶ 6.) Consequently, on September 10, 2012, Treasury issued a Wage Garnishment Order to Petitioner's employer. (Sec'y. Stat., ¶ 8; Dillon Decl., ¶ 8.)

Based on the issuance of the Wage Garnishment Order, Petitioner's pay was garnished nine times in the amount of \$55.20 each. Seven garnishments totaling \$386.40 have been received by HUD and are reflected in the outstanding balance above. However, Treasury has not yet transferred two garnishments totaling \$110.40 to HUD; therefore those payments are not yet reflected in the outstanding balance. (Sec'y. Stat., ¶ 9; Dillon Decl., ¶ 9.)

On December 11, 2012, HUD attempted to contact Petitioner to obtain a copy of her current pay stub. However, the telephone number Petitioner provided on her Hearing Request

¹ Brian Dillon is Director of the Asset Recovery Division of HUD's Financial Operations Center.

Form is out of service. (Sec'y. Stat., ¶ 10; Dillon Decl., ¶ 10.) The Secretary proposes an administrative wage garnishment of \$55.20 weekly or 15% of Petitioner's weekly disposable pay. (Sec'y. Stat., ¶ 11; Dillon Decl., ¶ 11.)

Discussion

In this case Petitioner contends that she does not owe the full amount of the debt because, since 2011, she has been separated from her husband who she claims actually owes the alleged debt. (Petitioner's Hearing Request, "H'rg. Req.", filed December 7, 2012.) Petitioner failed however to introduce documentary evidence as proof to support her allegation.

The Secretary contends on the other hand that Petitioner agreed to pay a sum certain in the amount of \$43,807.95 pursuant to the terms of the Note, but later, Petitioner failed to make such payment as she had agreed. (Sec'y. Stat., ¶2, 4.) As support, the Secretary produced a copy of the Note signed by Petitioner in which Petitioner agreed that "all amounts owed under this contract will be paid when due. *Co-signer will still be obligated even if Buyer is released or if Seller waives or delays enforcement of any of Seller's rights under this contract.*" (Sec'y. Stat., Ex. B, Note, GUARANTY PROVISION.)

A careful examination of the record lends support for the position that Petitioner remains legally obligated to pay the alleged debt, despite her status as co-signer. This Court has previously held that co-signers of a loan are jointly and severally liable for such contractual obligation, and as a consequence, "a creditor may sue the parties to such obligation separately or together." *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). As a result, the Secretary in this case "may proceed against any co-signer for the full amount of the debt" because each co-signer is considered legally obligated to pay the subject debt. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004).

The Secretary's right to collect the alleged debt in this case emanates from the terms of the Note. *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). In order for Petitioner to prove that she cannot be held liable for the subject debt, she must submit evidence of either: (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or, (2) evidence of valid or valuable consideration paid to HUD to release her from her legal obligation to pay the alleged debt. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

Here, Petitioner has failed either to produce evidence of a written release from her legal obligation to pay the alleged debt, or failed to introduce evidence of valuable consideration paid to HUD in satisfaction of the alleged debt. The existence of such evidence would have rendered the alleged debt unenforceable.

While Petitioner may be separated from her ex-husband, it is not clear from the record that a divorce actually occurred. It is also not evident in the record that if a divorce had occurred, that the Secretary or the lender was a party to that divorce action. But, if a divorce did in fact take place, Petitioner may as a recourse seek to enforce in the state or local court the divorce decree that was granted against her ex-husband so that she may recover from him the amount she will now have to pay HUD in satisfaction of this legal obligation. *See Michael York, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3.* I find, therefore, without proof of a written release in this case, and without sufficient evidence of record to refute or rebut that which was presented by the Secretary, Petitioner remains legally obligated as co-signer to pay the debt that is the subject of this proceeding.

As a final point, Rule 26.4(d) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party.*

(Emphasis added).

Accordingly, I find that, pursuant to Rule 26.4(d), Petitioner's non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

ORDER

Based on the foregoing, the Order 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 an amount equal to \$55.20 weekly or 15% of Petitioner's disposable pay.



Vanessa L. Hall
Administrative Judge