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

In the Matter of: **Leslie Buttery,** Petitioner.	HUDOHA 13-VH-0092-AG-038 Claim No. 780736713 July 25, 2013

DECISION AND ORDER

On February 25, 2013, Petitioner requested a hearing concerning a proposed administrative wage garnishment 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 the collection of debts owed to the United States government.

Applicable Law

The administrative judges of this Court are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if such action is contested by a debtor. 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 both the existence as well as the amount of the alleged debt. 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.)

Procedural History

Pursuant to 31 C.F.R §285.11(f)(4) and (10)(ii), on February 27, 2013, 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*"). In response to the *Notice of Docketing* issued by the Court, the *Secretary's Statement* was filed on March 5, 2013. Following a subsequent *Order* issued on April 16, 2013, Petitioner submitted documentary evidence in support of her position on May 6, 2013. This case is now ripe for review.

Findings of Fact

On April 6, 2006, Petitioner executed and delivered a Retail Installment Contract – Security Agreement ("Note") to Crossland London in the amount of $28,728.11, which was insured against non-payment by the Secretary, pursuant to Title 1 of the National Housing Act,

12 U.S.C. § 1703. (*Secretary's Statement* ("*Sec'y Stat.*") ¶ 2, filed on March 5, 2013; Exhibit A, Note.) Contemporaneously, on April 6, 2006, the Note was assigned by Crossland London to Vanderbilt Mortgage and Finance Company, Inc. (*Sec'y Stat.* ¶ 3; Note ¶ 5.) "Petitioner failed to make payment on the Note as agreed," and Vanderbilt Mortgage and Finance, Inc. assigned the Note to the United States of America. (*Sec'y Stat.* ¶ 4.) The Secretary is the holder of the Note on behalf of the United States. (*Sec'y Stat.* ¶ 4; Exhibit B, Copy of Assignment of Contract.) HUD has attempted to collect on the Note from Petitioner, but Petitioner remains delinquent. (*Sec'y Stat.* ¶ 5; Exhibit C, *Declaration of Brian Dillon* ("*Dillon Decl.*") ¶ 4.) HUD thereby alleges that Petitioner is indebted to HUD in the following amounts:

(a) $14,766.16 as the unpaid principal balance as of February 28, 2013;

(b) $12.30 as the unpaid interest on the principal balance at 1% per annum through February 28, 2013; and

(c) interest on said principal balance from March 1, 2013 at 1% per annum until paid.

(Id.)

Pursuant to 31 C.F.R. § 285.11 (e), a Notice of Intent to Initiate Administrative Wage Garnishment ("Notice") was mailed to Petitioner on April 27, 2013. (*Sec'y Stat.* ¶ 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. (*Sec'y Stat.* ¶ 7; *Dillon Decl.* ¶ 6.) Petitioner has not entered into such an agreement in response to the Notice. (Id.) On May 29, 2012, a Wage Garnishment Order was issued to Petitioner's employer. (*Sec'y Stat.* ¶ 10; *Dillon Decl.* ¶ 7.) Petitioner's pay has been garnished seven times, totaling $1,264.19, and those payments are reflected in the unpaid principal balance listed above. (*Sec'y Stat.* ¶ 11; *Dillon Decl.* ¶ 8.)

To date, Petitioner has not provided HUD with her current pay stub. (*Sec'y Stat.* ¶ 12; *Dillon Decl.* ¶ 9.) The Secretary proposes a repayment schedule of $203.20 per month, or 15% of Petitioner's disposable pay. (Id.)

Discussion

Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), Petitioner must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. Here, Petitioner first claims that she has "never had a home improvement loan and never applied for one." (*Petitioner's Hearing Request* ("*Pet'r Hrg. Req.*") dated April 27, 2012.) While Petitioner maintains that she never had a home improvement loan, the Secretary maintains that Petitioner's indebtedness to HUD is "based on her failure to make payment on the HUD-insured manufactured home loan that she executed on April 6, 2006, not a home improvement loan." (*Sec'y Stat.* ¶ 9.) As support, the Secretary introduces as evidence a copy of the Note signed by Petitioner. The language in the Note describes the terms of the "manufactured home" loan and

also indicates that Petitioner is legally obligated to pay the subject debt upon default. (*Sec'y Stat.* ¶ 9, Exhibit 1, Note.) There is no evidence of record for the Court to review in support of Petitioner's position. As a result, Petitioner's claim must fail for lack of proof.

Next, Petitioner claims that she "reported identity theft because I have been getting bills for things that I have never had in my home or in my name" (Id.) Again, Petitioner has submitted no evidence in the form of a police report or fraud claim filed in order to substantiate this claim. This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Because of the lack of evidence, Petitioner's claim must once again fail.

Finally, Petitioner claims that her signature was forged on the Note. (*Petitioner's Documentary Evidence* ("*Pet'r's Doc. Evid.*") submitted May 6, 2013.) More specifically, Petitioner states "I'm sending you the proof that someone signed the contract and that it wasn't me that signed it cause[sic] there are differences in the signatures." (Id.) In a forgery case like the instant case, the Court must determine whether the evidence submitted by the Petitioner is sufficient to meet Petitioner's burden of proof that the signature is forged or unauthorized. In support of her forgery claim, Petitioner submitted a copy of the Note that allegedly bore the forged signature, and a copy of her Hearing Request, allegedly bearing the authentic signature. (*Pet'r's Doc. Evid.*) On each document, Petitioner provides short explanations for the signature discrepancies and she also provides a separate letter that further explains the discrepancies. For example, Petitioner explains that the "L" in the alleged forged signature on the Note is "open" while the "L" on the alleged authentic signature on the Hearing Request "isn't open." (Id.) Petitioner adds that there are differences between the "s's", "B's", and "y's" of the signatures in question. (Id.)

These explanations are to no avail in this case, however, because administrative judges are not handwriting experts. In order to determine whether forgery occurred, administrative judges must rely on the scientific testimony of experts, not laypersons, to make that determination. See In the Matter of Lawrence Syrovatka, HUDOA No. 07-A-CH-HH10 (November 18, 2008). To do so in this case, the Court must determine the following : (1) whether Petitioner qualifies as an expert; and if so, (2) whether her opinion is admissible. While the Federal Rules of Evidence are usually not binding in an administrative proceeding, the Court can rely upon the Rules of Evidence ("Fed. R. Evid.") as a guide to determine whether Petitioner qualifies as an expert capable of offering an opinion that is admissible. (See 24 C.F.R. § 26.24.)

Under Rule 702 of the Federal Rules of Evidence, "if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if: (1) the testimony is based upon sufficient facts or date, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliable to the facts of this case.

First, "expert status may be based on knowledge, skill, experience, training, or education." United States v. Frazier, 387 F.3d 1244, 1261(11th Cir. 2004) (referencing Fed. R. Evid. 702). Here, Petitioner does not offer evidence to prove that she has specialized knowledge or training in document examination or handwriting analysis. She is merely alleging that the signature is not her own. While the Secretary did not address this argument regarding the authenticity of the signature on the Note, the burden to rebut such presumption of authenticity of questioned signatures actually falls on Petitioner. In the Matter of Juan Velaquez, HUDBCA No. 02-C-CH-CC049 (September 25, 2003) (citing Elizabeth Argon, HUDBCA NO. 97-C-SE-W231 (October 28, 1997). Accordingly, since Petitioner has failed to meet that burden, the Court finds that Petitioner's allegation, without expert testimony, is not enough to convince the Court that her signature was forged.

As a final point, Petitioner claims that the administrative wage garnishment has created an undue financial hardship. Petitioner states that this garnishment has "put a lot of stress and financial difficulties on me and my family and difficulties on[sic] getting my 10 month old daughter things that she needs..." (*Pet'r's Doc. Evid.*) However, Petitioner again failed to submit evidence that substantiates this claim, despite being ordered by the Court to do so. (*Notice of Docketing*, at 2.) As previously indicated, "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, Petitioner's claim of undue financial hardship fails for want of proof.

Order

Based on the foregoing, I find that the debt that is the subject of this proceeding not only exists and but is also enforceable in the amount claimed by the Secretary.

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

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at 15% of Petitioner's disposable income. It is

SO ORDERED.

Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause. Should a Decision and Order upon Reconsideration thereafter be issued it shall be considered final unless a party timely appeals the determination in accordance with 24 C.F.R. § 26.26 (2012). Any party may request, in writing, Secretarial review of the determination within 30 days after the hearing officer issues the determination in accordance with § 26.26 of this part.