

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

In the Matter of:

Penny L. Sloop,

Petitioner.

Case No. 13-VH-0122-AG-051

Claim No. 5479312 LL 9244

November 4, 2013

DECISION AND ORDER

On May 14, 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 have been designated to adjudicate contested cases where the Secretary of State 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 the 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), on May 15, 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*”), p.2. On June 11, 2013, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to respond to any of the Orders issued by the Court. *Notice of Docketing; Order for Documentary Evidence*, dated July 8, 2013; *Order to Show Cause*, dated July 30, 2013. This case is now ripe for review.

Background

On March 4, 1991, Petitioner executed and delivered a Retail Installment Contract (Note) to AAA Mobile Homes in the amount of \$16,059.00, which was insured against non-payment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). *Secretary's Statement (Sec'y Stat.)* ¶ 2, dated June 11, 2013; Exhibit A, Note. Contemporaneously, on March 29, 1991, the Note was assigned by AAA Mobile to Logan-Laws Financial Corporation. *Sec'y Stat.* ¶ 1-2. Thereafter, Logan Laws defaulted and all of its rights, title, and interest in Petitioner's loan were assigned to the Government National Mortgage Association (GNMA) per the Guarantee Agreement entered into between Logan Laws and GNMA. *Sec'y Stat.* ¶ 5; Exhibit B, *Declaration of Leslie A. Meaux (Meaux Decl.)* ¶ 4. Since GNMA (a division of HUD) is the holder of the Note, the Secretary may collect repayment from Petitioner.

The Secretary has attempted to collect on the Note from Petitioner, but Petitioner remains delinquent. *Sec'y Stat.* ¶ 7; Exhibit B, *Meaux Decl.* ¶ 6. Petitioner is indebted to the Secretary on the claim in the following amounts:

- (a) \$6,283.03 as the unpaid principal balance;
- (b) \$4,913.32 as the unpaid interest on the principal balance through June 6, 2013;
- (c) \$300.00 as the unpaid administrative costs;
- (d) \$1,710.36 as the unpaid penalty; and
- (e) Interest, administrative costs, and penalty on said principal balance 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 May 2, 2013. *Sec'y Stat.* ¶ 7; Exhibit B, *Meaux Decl.* ¶ 7. 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.* ¶ 8; Exhibit B, *Meaux Decl.* ¶ 7. Petitioner has not entered into such an agreement. Id.

The Secretary proposes a repayment schedule of 10% of Petitioner's disposable monthly income. *Sec'y Stat.* ¶ 13; Exhibit B, *Meaux Decl.* ¶ 9.

Discussion

Petitioner challenges the amount of the alleged debt. Petitioner states that "all payments were made to the lender." *Petitioner's Hearing Request, (Pet'r Hr'g. Req.)*, filed May 14, 2013. Although Petitioner alleges that all payments were made, she has failed to provide documentary evidence that would sufficiently persuade the Court that payment of the alleged debt has been fully satisfied.

The Secretary contends, on the other hand, that the alleged debt is past due and legally enforceable. *Sec'y Stat.* ¶ 13. As support, the Secretary produced a copy of the Note signed by

Petitioner, along with a copy of a sworn declaration from the Acting Monitoring Director of the Mortgage-Backed Securities Monitoring Division of the GNMA within HUD who is responsible for monitoring computerized and manual accounting records of payments made towards Petitioner's debt account. *Sec'y Stat.*, Exhibit A; Exhibit B, *Meaux Decl.*, ¶ 3. The Secretary provided the monitoring director's declaration to also substantiate the current amount of the alleged debt owed by Petitioner. *Sec'y Stat.*, Exhibit B, *Meaux Decl.* ¶ 6.

In this case, the legal obligation of Petitioner to pay the subject debt emanates from the terms of the Note that is a valid contract. It is evident from the language of the Note that Petitioner promised Lender that she would "purchase the following described manufactured home and other personal property for the Total Sale Price and *on the terms set forth in this contract.*" (Emphasis added.) *Sec'y Stat.*, Exhibit A, Note, p.1. Furthermore in this case, North Carolina requires the application of state law to contractual obligations. See Dassault Falcon Jet Corp. v. Oberflex, Inc., 909 F. Supp. 345, 352 (M.D.N.C. 1995) (when parties to a contract fail to agree on which state's laws shall apply, that section requires the application of North Carolina law to transactions which bear an "appropriate relation" to the state); see also N.C. Gen. Stat. § 25-1-301 (2006). Consequently, North Carolina law provides that a payment by a party may constitute an accord and satisfaction of a note if the following prerequisites are satisfied:

(a) If a person against whom a claim is asserted proves that: (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

N.C. Gen. Stat. § 25-3-311 (2001).

Here, Petitioner has failed to provide any proof that the prerequisites listed in the governing statute have been satisfied and hence there is no basis for the Court to find that the subject debt has been paid in full. Without any record of evidence from Petitioner that would refute or otherwise rebut the claim of the Secretary, the Court finds that Petitioner's claim fails for lack of proof.

Next, Petitioner states that, "a title was issued free and clear with no liens, in 2010." *Pet'r Hr'g. Req.* Beyond merely alleging that there was a free and clear title, Petitioner again failed to introduce evidence that the free and clear status of the title resulted in effectively releasing Petitioner from her legal obligation to pay the alleged debt. While the Secretary acknowledged the release of the lien on Petitioner's property, he maintains that the release of the lien did not constitute a release of Petitioner's obligation to pay the debt that is the subject of this proceeding. *Sec'y Stat.*, ¶ 10. The Secretary further maintains that "A debt or obligation may be enforced even though an action to enforce the lien is barred." *Id.* See also 51 Am. Jur. 2d Liens § 13 (2011).

Since Petitioner has failed to produce any evidence that would persuade the Court that she was effectively released from her legal obligation to pay the subject debt, the Court finds that the alleged debt remains past due and legally enforceable against Petitioner. This Office has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and 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, the Court further finds Petitioner’s claim fails again for lack of proof.

As a final point, Rule 26.4(c) 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.)

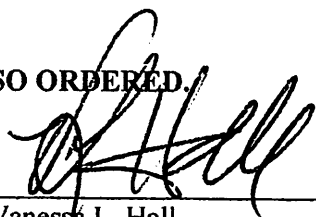
Accordingly, the Court finds that, pursuant to Rule 26.4(c), Petitioner’s non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

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**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount equal to 10% of Petitioner’s monthly disposable pay. 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.