

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

In the Matter of:

Elizabeth A. Dixon,

Petitioner.

Case No. HUDOHA 13-VH-0134-AG-059

Claim No. 721005672

November 22, 2013

DECISION AND ORDER

On June, 13, 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 June 17, 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 July 16, 2013 the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file sufficient documentary evidence that supports her claim that the alleged debt is not past due or that the alleged debt would create a financial hardship. *See Notice of Docketing, Order for Documentary Evidence* ("Order"), dated August 14, 2013; *Order to Show Cause* ("Show Cause Order"), dated September 11, 2013. This case is now ripe for review.

Background

On April 20, 2005 and March 15, 2006, Petitioner executed and delivered to the Secretary two (2) Subordinate Notes ("Notes") in the amounts of \$4,646.95 and \$6,436.22, respectively. The Notes secured Subordinate Mortgages ("Mortgages") held by the Secretary. *Secretary's Statement* ("Sec'y Stat.") ¶ 2, dated July 16, 2013. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured mortgage lender; and in exchange for such funds, Petitioner executed the Notes in favor of the Secretary. *Sec'y Stat.* ¶ 3; Ex. 1, *Declaration of Brian Dillon*¹ ("*Dillon Decl.*"), ¶ 4.

The Secretary has attempted to collect on the Note from Petitioner, but Petitioner remains delinquent and indebted to him. *Sec'y Stat.* ¶ 6; Ex. 1, *Dillon Decl.* ¶ 5. While Petitioner's combined unpaid principal balance on the Notes remains the same as adjudicated on June 3, 2009, her total debt to HUD has increased due to the accrual of interest, penalties and costs. *Sec'y Stat.*, ¶ 6. Petitioner is indebted to the Secretary on the claim in the following amounts:

- (a) \$11,083.17 as the total unpaid balance as of May 30, 2013;
- (b) \$1,579.47 as the unpaid interest on the principal balance at 1% per annum through May 30, 2013;
- (c) \$1,760.77 as the unpaid penalties and administrative costs as of May 30, 2013; and
- (d) Interest on said principal balance from June 1, 2013, at 3% per annum until paid. Exhibit 1, ¶ 5.

(*Sec'y Stat.* ¶ 8; Ex. 1, *Dillon Decl.*, ¶ 5.)

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 16, 2013. *Sec'y Stat.* ¶ 7; Ex. 1, *Dillon Decl.* ¶ 6. 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. *Dillon Decl.* ¶ 7. Petitioner has not entered into such an agreement. (*Id.*) Petitioner provided a copy of her bi-weekly pay statement. *Sec'y Stat.* ¶ 12; Ex. 1, *Dillon Decl.* ¶ 8. Additionally, Petitioner completed a Consumer Debt Financial Statement. *Sec'y Stat.* ¶ 12; Ex. 4.

Based on Petitioner's pay statement, an administrative wage garnishment authorized at 15% of Petitioner's disposable pay would result in a biweekly repayment schedule under such garnishment order equal to \$85.74. *Sec'y Stat.*, Ex. 1, *Dillon Decl.*, ¶ 8. The Secretary proposes a repayment schedule of \$85.74 biweekly or 15% of Petitioner's disposable monthly income. *Sec'y Stat.* ¶ 13; *Dillon Decl.* ¶ 8.

Discussion

Petitioner disputes the existence of the subject debt and challenges the amount claimed by the Secretary to be owed. Petitioner claims "...I do not owe the debt." *Petitioner's Hearing Request*, (*Pet'r.. Hr'g.. Req.*), filed June 13, 2013. However, Petitioner has failed to produce

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

documentary evidence that would sufficiently persuade the Court that she does not owe the alleged debt or that the debt is not past due and thus unenforceable.

The Secretary contends, on the other hand, that the alleged debt is past-due and legally enforceable. *Sec'y. Stat.* ¶ 9. As support, the Secretary produced a copy of a sworn declaration from the Director of HUD's Asset Recovery Division in which the Director substantiates the debt amount owed by the Petitioner. *Sec'y Stat.*, Ex. 1, *Dillon Decl.* ¶ 5. The Court has determined that the evidence presented by the Secretary is sufficient and credible. Without evidence from Petitioner either to refute or rebut the Secretary's claim, the Court finds that Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

Next, Petitioner claims financial hardship and more specifically states that, "I am working on a part time job, ...". *Pet'r. Hr'g. Req.* As support, Petitioner submitted a copy of her Consumer Debtor Financial Statement, but no further evidence of financial hardship beyond her financial statement was provided, despite Petitioner being extended the opportunity to do so. *Notice of Docketing; Order; and Show Cause Order.*

The Secretary claims, nevertheless, that the Petitioner's debt is past due and legally enforceable and as a result seeks authorization of his proposed repayment schedule for Petitioner. The Secretary argues that even if the Petitioner was to submit requisite compelling documentation of financial hardship, it could not be taken into consideration in determining whether the debt is past-due and enforceable. *Sec'y. Stat.*, ¶ 11. In support of his position, he states that the Petitioner has not provided the Court with any supporting documentary evidence of financial hardship, as required by 31 C.F.R. 285.11(f)(8)(ii) and 31 C.F.R. 285.11(k)(3). *Sec'y Stat* ¶ 11.

Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. Raymond Kovalski, HUDBCA No. 87-1681- G18 (December 8, 1986). *Sec'y Stat* ¶ 11. 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." See 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 finds Petitioner's claim fails for lack of proof.

Finally, the Secretary claims, "whether Petitioner owes the debt is precluded by the doctrine of res judicata." *Sec'y. Stat.*, ¶ 9. According to the Secretary, the Office of Appeals previously adjudicated the existence, amount, and enforceability of this debt against Petitioner and affirmed that judgment. *Id.*, Ex. 2; Ex. 3. The Secretary further claims that Petitioner "has not raised any new facts with respect to the validity or amount of the debt." *Sec'y. Stat.*, ¶ 9. "The June 29, 2009 Order is final," according to the Secretary, "and time to take any further appeal of that Order has long since lapsed." *Id.* As support, the Secretary introduces into evidence copies of previous decisions issued by the Office of Hearings and Appeals in which the administrative judge determined that the alleged debt existed and is legally enforceable. *Sec'y Stat.*, Ex. 2; Ex. 3.

Under the doctrine of res judicata, “a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.” Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n.5 (1979) *See also* Test Masters Educational Services, Inc. v. Singh, 428 F.3d 559 (5th Cir. 2005), citing Petro–Hunt, L.L.C. v. United States, 365 F.3d 385, 395 (5th Cir.2004)(quoting In re Southmark Corp., 163 F.3d 925, 934 (5th Cir.1999) (Claim preclusion, or res judicata, bars the litigation of claims that either have been litigated or should have been raised in an earlier suit). The parties and cause of action in this proceeding are identical to the parties and cause of action in the previous proceeding. *See* Sec’y. Stat., ¶ 9., Ex. 2; Ex. 3. As a result, the doctrine of res judicata can operate to bar this administrative proceeding because the doctrine is purposed to “prevent a plaintiff from relitigating claims that were or could have been litigated in a prior lawsuit.” Oreck Direct LLC v. Dyson Inc., 560 F.3d 398, 401 (5th Cir.2009). Accordingly, the Court finds here that Petitioner’s claim is without merit because it has been previously adjudicated and affirmed against Petitioner.

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.)

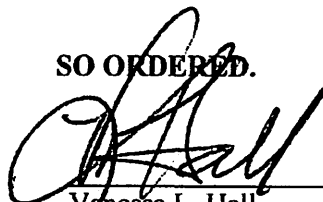
Therefore, I find that, pursuant to Rule 26.4(c), Petitioner’s non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

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 at 15% of Petitioner’s disposable pay. It is

SO ORDERED.



Vanessa L. Hall
Administrative Judge