

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

In the Matter of:

**Sarah Smith,**

Petitioner.

HUDOHA 13-VH-0149-AG-065  
Claim No. 780751464

January 13, 2014

**DECISION AND ORDER**

On July 31, 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 the U.S. Housing and Urban Development 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). Thereafter, Petitioner 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 August 1, 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 August 7, 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 September 23, 2013; *Order to Show Cause*, dated October 24, 2013. This case is now ripe for review.

**Background**

On May 26, 2009, Petitioner executed and delivered a Retail Installment Contract-Security Agreement (Note) to Luv Homes Grayson, KY a/k/a/ CMH of KY, Inc., in the amount

of \$40,177.44, which was insured against non-payment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. *Secretary's Statement (Sec'y. Stat.)* ¶ 2, dated August 7, 2013; Exhibit A, Note. Contemporaneously, the Note was assigned to Vanderbilt Mortgage and Finance, Inc. *Sec'y Stat.* ¶ 3, Exhibit B. Petitioner failed to make payment on the Note as agreed. *Sec'y Stat.* ¶ 4. Consequently, in accordance with 24 C.F.R. § 201.54, Vanderbilt Mortgage and Finance, Inc. assigned the Note to the United States of America. *Id.*, Exhibit B. The Secretary is the holder of the Note on behalf of the United States. *Id.*, Exhibit C, *Declaration of Brian Dillon (Dillon Decl.)*, ¶ 4.

The Secretary has made efforts to collect the subject debt from Petitioner, but has been unsuccessful. *Sec'y. Stat.* ¶ 5; Exhibit C, *Dillon Decl.* ¶ 4. Petitioner is indebted to the Secretary on the claim in the following amounts:

- (a) \$12,054.33 as the unpaid principal balance as of July 31, 2013;
- (b) \$617.29 as the unpaid interest on the principal balance at 1% per annum through July 31, 2013;
- (c) \$757.89 as the unpaid penalties and \$35.33 as the unpaid administrative costs; and,
- (d) Interest on said principal balance from August 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") dated July 12, 2013 was sent to Petitioner. *Sec'y Stat.* ¶ 6; Exhibit C, *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; Exhibit C, *Dillon Decl.* ¶ 6. Petitioner did not enter into a repayment agreement or pay the debt in full based on the July 12, 2013 Notice. Id.

An attempt was made to obtain Petitioner's paystub but without success. The Secretary's proposed repayment schedule is \$374.00 per month which will liquidate the debt in approximately three years as recommended by the Federal Claims Collections Standards, or 15% of Petitioner's disposable pay. *Sec'y. Stat.*, ¶ 8; *Dillon Decl.*, ¶ 7.

### Discussion

Petitioner claims she does not owe the alleged debt because the debt does not exist. *Petitioner's Hearing Request, (Pet'r. Hr'g. Req.)*, filed July 31, 2013. Petitioner also disputes the terms of the proposed garnishment. Id. Petitioner does not, however, provide documentary evidence that would support her position that the subject debt no longer exists.

The Secretary contends, on the other hand, that the subject debt not only exists and but it is also past due and legally enforceable. *Sec'y. Stat.*, p. 3. As support, the Secretary produces a copy of the Note signed by Petitioner, along with a copy of a sworn declaration from the Acting

Director of the Asset Recovery Division of HUD's Financial Operations Center who is responsible for monitoring collection of defaulted loans assigned to the Secretary of HUD under the Title I Insurance Program. *Sec'y. Stat.*, Exhibit C, *Dillon Decl.*, ¶ 2. The Secretary provided such evidence to not only substantiate that the alleged debt exists but also to support the current amount owed as that claimed by the Secretary. *Sec'y. Stat.*, Exhibit C, *Dillon Decl.* ¶ 4.

Because Petitioner has failed to provide any evidence to either refute or rebut the evidence presented by the Secretary, and also has failed to submit evidence in support of her position that the subject debt no longer exists, the Court finds that Petitioner's claim fails 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 15% of Petitioner's monthly disposable pay.

**SO ORDERED.**

  
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Vanessa L. Hall  
Administrative Judge

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**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.