

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

In the Matter of:

Shawana Sewell,

Petitioner.

HUDOHA 13-VH-0153-AG-069
Claim No. 780285283

March 10, 2014

DECISION AND ORDER

On August 12, 2013, Shawana Sewell (“Petitioner”) filed a *Hearing Request* concerning a proposed administrative wage garnishment for a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “Secretary”). HUD is authorized to garnish the disposable pay of an individual to collect a nontax debt owed to the United States. 31 U.S.C. § 3720D.

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. 24 C.F.R. § 17.81(b). The garnishment amount may not exceed 15 percent of disposable pay absent the written consent of the debtor. 31 U.S.C. § 3720D (b) (1). This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, and 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 present 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). Furthermore, 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 History

Pursuant to 31 C.F.R. § 285.11(f) (4), on August 14, 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*”), 2.) On September 12, 2013, the Secretary filed his *Statement* along with documentation in support of his position. On September 27, 2013, this Court issued an *Order for Documentary Evidence*, requiring Petitioner to file documentary evidence in support of her position. On October 24, 2013, this Court issued an *Order to Show*

Cause. To date, Petitioner has failed to file sufficient documentary evidence in support of her claim that all or part of the alleged debt in this case is not past due or not legally enforceable, and has also failed to respond to the orders issued by this Court. This case is now ripe for review.

Background

On July 6, 1995, Petitioner executed and delivered a Home Improvement Retail Installment Contract and Security Agreement (“Note”) to Best Exterior Design in the amount of \$20,950.00. (*Secretary’s Statement* (“*Sec’y Stat.*”), ¶ 2, filed September 12, 2013; Ex. 1, Note at p. 1.) Pursuant to Title I of the National Housing Act, the Note was insured against nonpayment by the Secretary. (*Sec’y Stat.*, ¶ 3.) After default by Petitioner, the Note was assigned to HUD by Conesco Finance Servicing Corp., f/k/a Green Tree Financial Servicing Corporation. (*Sec’y Stat.*, ¶ 4; Ex. 2, *Declaration of Kathleen M. Porter*¹ (“*Porter Decl.*”), ¶ 3, dated August 19, 2013; Ex. 3, Assignment, dated August 2, 2000.)

HUD has attempted to collect the amount due under the Note, but Petitioner remains in default. (*Sec’y Stat.*, ¶ 5; *Porter Decl.*, ¶ 4.) As a result, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$16,837.73 as the unpaid principal balance as of July 31, 2013;
- (b) \$5,263.05 as the unpaid interest on the principal balance at 5% per annum through July 31, 2013; and
- (c) Interest on said principal balance from August 1, 2013, at 5% per annum until paid.

(*Sec’y Stat.*, ¶ 6; *Porter Decl.*, ¶ 4.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated July 10, 2013, was mailed to Petitioner. (*Sec’y Stat.*, ¶ 7; *Porter Decl.*, ¶ 5.) In accordance with 31 C.F.R. § 285.11(e) (2) (ii), Petitioner was afforded an opportunity to enter into a written repayment agreement under the terms agreeable to HUD. (*Porter Decl.*, ¶ 6.) The Notice sent to Petitioner satisfied this requirement when it stated, “[y]ou should call us at the telephone number listed below to discuss acceptable repayment plans.” *Id.* However, Petitioner has not entered into a written repayment agreement, or paid the debt in full in response to the Notice. (*Sec’y Stat.*, ¶ 8; *Porter Decl.*, ¶ 7.)

The Secretary has attempted to obtain Petitioner’s current pay stub, but Petitioner has not provided that information. (*Sec’y Stat.*, ¶ 10; *Porter Decl.*, ¶ 8.) Therefore, the Secretary’s

¹ Kathleen M. Porter is Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center.

proposed repayment schedule is \$662.00 per month, as recommended by the Federal Claims Collection Standard. (*Sec'y Stat.*, ¶ 11; *Porter Decl.*, ¶ 8.) In the alternative, the Secretary's proposed repayment schedule is 15% of the Petitioner's disposable income. (*Sec'y Stat.*, ¶ 11; *Porter Decl.*, ¶ 8.)

Discussion

In the *Hearing Request* filed by Petitioner concerning the existence and amount of the debt to HUD, Petitioner claims that she does not owe the debt. (*Petitioner's Hearing Request* ("*Hearing Request*"), dated July 28, 2013.) More specifically, Petitioner states that, "I have no proof that this is my debt. I spoke with HUD back in April [and was] told that I would receive papers that I signed. I haven't seen them yet." (*Id.*) 31 C.F.R. § 285.11 (8) (ii) states:

If the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

Petitioner submitted, in this case, copies of her Notice and Complete Debtor History, neither of which, upon review, were considered by the Court to be sufficient to support Petitioner's allegations. Petitioner failed to produce evidence that supports her claims, despite being extended the opportunity to produce such evidence on three occasions. (*Notice of Docketing; Order for Documentary Evidence*, dated September 27, 2013; *Order to Show Cause*, dated October 24, 2013.) As a result, the Court finds that Petitioner's claim challenging the existence, amount, or validity of the subject debt fails for lack of proof.

The Secretary claims, on the other hand, that the Petitioner's debt is past due and legally enforceable. (*Sec'y Stat.*, ¶ 8.) In support of his position, the Secretary produced a copy of the Note signed by the Petitioner, along with a copy of a sworn declaration from the Director of HUD's Asset Recovery Division in which the Director substantiates the debt amount claimed by the Secretary to be owed by Petitioner. (*Sec'y Stat.*, ¶ 6, Exh. 1, Note; *Porter Decl.*, ¶ 4.) It is evident from the language of the Note that Petitioner agreed with the lender that she would pay the principal sum, plus interest, until paid in full. (*Sec'y. Stat.*, Exh. 1, Note, pp. 1, and 2 OBLIGATIONS INDEPENDENT.)

31 C.F.R. § 285.11 (f) (8) (i) states that, "the agency will have the burden of going forward to prove the existence or amount of the debt." Here, the Court has determined that the Secretary has successfully met the burden of proof required to substantiate that the alleged debt

is past due and legally enforceable. There is no evidence of record that either refutes or rebuts the evidence presented by the Secretary. So, the Court has determined that, consistent with case law precedent, “[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)); see also 31 C.F.R. § 285.11 (f) (8) (ii). The Court therefore finds that, without evidence to refute or rebut Petitioner’s claim, the Secretary has successfully met his burden of proof that the alleged debt against Petitioner is past due and legally enforceable.

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, 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**. 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 15% of Petitioner’s disposable income.



Vanessa L. Hall
Administrative Judge