

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

In the Matter of:

**Jessica Narramore,**

Petitioner.

HUDOHA 13-VH-018-AG-7  
Claim No. 78-074572-20A

March 8, 2013

**DECISION AND ORDER**

On October 12, 2012, Jessica Narramore ("Petitioner") filed a hearing request concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary"). 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 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 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 October 15, 2012, 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 October 12, 2012, Petitioner submitted along with her hearing request certain documentary evidence in support of her position. On October 24, 2012, the Secretary filed his statement along with documentation in support of his position. This case is now ripe for review.

**Background**

On June 27, 2005, Petitioner executed and delivered a Manufactured Home Retail Installment Contract ("Note") to Wholesale Homes of Al Inc. – Jasper in the amount of

\$33,886.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y. Stat.") ¶ 2, filed October 24, 2012; Ex. A, Note.) Contemporaneously, on June 27, 2005, the Note was assigned by Wholesale Homes of Al Inc. – Jasper to CU Factory Built Lending, LP. (Sec'y. Stat., ¶ 3; Note, at 4; Ex. C, Declaration of Gary Sautter<sup>1</sup> ("Sautter Decl.", ¶ 3.) Petitioner failed to make payments as agreed in the Note. (Sec'y. Stat., ¶ 4.) Consequently, in accordance with 24 C.F.R. § 201.54, on May 7, 2012, CU Factory Built Lending, LP assigned the Note to the United States of America. (Sec'y. Stat., ¶ 4; Ex. B, Assignment; Sautter Decl., ¶ 3.) The Secretary is the holder of the Note on behalf of the United States of America. (Sec'y. Stat., ¶ 4; Sautter Decl., ¶ 3.)

The Secretary has attempted to collect this debt from Petitioner, but has not been successful. (Sec'y. Stat., ¶ 5; Sautter Decl., ¶ 4.) As a result, Petitioner remains in default on the note and is indebted to the Secretary in the following amounts:

- (a) \$15,456.85 as the unpaid principal balance as of September 30, 2012;
- (b) \$638.18 as the unpaid interest on the principal balance at 1% per annum through September 30, 2012; and
- (c) interest on said principal balance from October 1, 2012 at 1% per annum until paid.

(Sec'y. Stat., ¶ 5; Sautter Decl., ¶ 4)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated September 14, 2012, was sent to Petitioner. (Sec'y. Stat., ¶ 6; Sautter Decl., ¶ 5.) Pursuant to 31 C.F.R. § 285.11(e) (2) (ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable term. As of the date of this Decision, she has failed to do so. (Sec'y. Stat., ¶ 7; Sautter Decl., ¶ 6.)

Petitioner provided a copy of her bi-weekly pay statement for the period ending September 28, 2012. (Sautter Decl., ¶ 8.) This pay statement indicates that Petitioner's bi-weekly disposable pay is \$815.41. Based on the pay statement, the Secretary proposes an administrative wage garnishment of \$122.31 bi-weekly or 15% of Petitioner's bi-weekly disposable pay. Id.

### **Discussion**

Petitioner disputes the existence of the debt and claims she does not owe the debt. More specifically, Petitioner claims "the debt HUD claims I owe is currently involved in a pending litigation in Circuit Court of Walker County." Petitioner's Hearing Request ("Hr'g. Req."), Attachments, filed October 12, 2012. As support, Petitioner submits a copy of a court order from the Circuit Court of Walker County, Alabama, in which it identifies a certain cause of action involving Petitioner that was set for final hearing on October 24, 2012. (Hr'g. Req.,

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<sup>1</sup> Gary Sautter is Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

Attachments.) Petitioner also introduced as evidence copies of a letter of representation from counsel for Petitioner, a pay statement for Petitioner that reflected Petitioner's bi-weekly income for September, 2012, and a list of alleged monthly expenses. Id.

In response, the Secretary states that "it is not readily apparent how the pending domestic relations litigation between Petitioner and Jeffrey Narramore would impact this administrative wage garnishment proceeding." (Sec'y. Stat., ¶ 9). The Secretary further states that "HUD is not a party to the proceeding in the Circuit Court of Walker County" and, as a result, HUD's right to pursue collection from Petitioner for the alleged debt is not within the jurisdiction of the Circuit Court of Walker County. Id., ¶ 10. The Secretary then states that "HUD cannot be bound by the terms of Petitioner's divorce decree, even if the decree makes Jeffrey Narramore responsible for payment of the subject debt." Id., ¶ 11. Finally, the Secretary claims that "since Mr. Narramore did not sign or co-sign the Note there is no privity of contract between HUD and Mr. Narramore." Id., ¶ 12.

As support, the Secretary introduces into evidence a copy of the Note signed by Petitioner, along with a copy of the sworn declaration from the Director of HUD's Asset Recovery Division in which the director substantiates the debt amount owed by Petitioner. (See Sec'y. Stat.; Ex. A; Ex. C.) After reviewing the contract, it is evident Petitioner agreed with the lender that she was "independently responsible to pay it and to keep the other promises made in this Contract. *This is even true if: ... B. We release or do not try to collect from another who is also responsible to pay this Contract.*" (Emphasis added.) (Sec'y. Stat., Ex. A, Note, p. 3, OBLIGATIONS INDEPENDENT.) Further, the Sautter Declaration extends additional support that "HUD's efforts to collect on the subject debt are not affected by the existence of the legal proceedings," because "HUD is not a party to the legal action in the Circuit Court of Walker county, Alabama ..." (Sec'y. Stat., Ex. C, ¶ 7.)

The limited evidence produced by Petitioner in this case is insufficient in supporting that Petitioner no longer owes the subject debt. Moreover, Petitioner has failed to produce additional sufficient and credible proof that her pending litigation with her ex-spouse precludes HUD from seeking repayment from Petitioner for the alleged debt, despite the Court ordering Petitioner to produce such evidence. (Notice of Docketing, dated October 15, 2012; Order for Documentary Evidence, dated November 19, 2012; Order to Show Cause, dated January 4, 2013.)

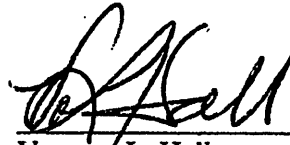
Alabama law in addition states that any judgment rendered in divorce proceedings only impacts the rights of ex-spouses with regard to each other. The Alabama Supreme Court has made it clear that the purpose of a property settlement agreement in a divorce case is to finalize a property settlement *between spouses*. Costanza v. Costanza, 346 So.2d 1133 (Ala. 1977) (Emphasis added). Such a settlement does not restrict obligations lawfully due by the divorcing spouses to third party creditors. Id. While not binding on this action as a procedural matter, Rule 71 of the Alabama Rules of Civil Procedure provides additional support for the Secretary's claim that HUD would not have standing to pursue collection from Petitioner's ex-spouse regardless of the terms of the divorce decree. Rule 71 allows a person other than a creditor who is not a party to an action to legally enforce a favorable judgment through the same process as if that party was a party to the action. Ala. R. Civ. P. 71.

If Petitioner wants to enforce the terms of the divorce decree, such may be accomplished in a state or local court so that Petitioner may recover from her ex-spouse monies paid to HUD by her in satisfaction of the debt that is the subject of this proceeding. See Linda Williams, HUDOA No. 11-H-NY-AWG71, dated July 15, 2011, at 4. Nevertheless, the Court finds here that the Secretary has met his burden of proof that the alleged debt is past due and legally enforceable against Petitioner. Without any additional evidence of record from Petitioner that would otherwise rebut or refute the evidence presented by the Secretary, the Court finds Petitioner's claim fails for want of sufficient and credible proof.

**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 \$122.31 bi-weekly or 15% of Petitioner's disposable pay.



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Vanessa L. Hall  
Administrative Judge