

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

In the Matter of:

**ERMILA NORIEGA,**

Petitioner.

HUDOHA No. 14-AM-00011-AG-006

Claim No. 0836304 Oak 9249

Judge H. Alexander Manuel

June 4, 2014

**DECISION AND ORDER**

On October 11, 2013, Ermila Noriega ("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"). 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 U.S. government.

**Applicable Law**

The Secretary has designated the administrative judges of this Court 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). This case 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. Pursuant to 31 C.F.R. § 285.11(f)(8)(i), the Secretary has the initial burden of proof to show the existence and amount of the debt. Thereafter, Petitioner must prove by a preponderance of the evidence that no debt exists, the amount of the debt is incorrect, or the terms of the repayment schedule would cause undue financial hardship for Petitioner. 31 C.F.R. § 285.11(f)(8)(ii).

**Procedural History**

On October 24, 2013, this Court stayed the issuance of a wage withholding order until the issuance of this written decision pursuant to 31 C.F.R. § 285.11(f)(4). (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), 2.) On December 6, 2013, the Secretary filed his Statement along with documentation in support of his position. On November 7, 2013 and January 13, 2014, this Court issued Orders for Documentary Evidence, requiring Petitioner to file documentary evidence to support Petitioner's position. To date, Petitioner has failed to file sufficient documentary evidence to support Petitioner's claim that all or part of the alleged debt in this case is not past due or not legally enforceable. Indeed, Petitioner has altogether failed to respond to the Orders issued by this Court. This case is now ripe for review.

## **Background**

On December 21, 1995, Petitioner executed and delivered a Retail Installment Contract - Security Agreement ("Note") to Golden Circle Financial Service. (Secretary's Statement ("Sec'y Stat."), ¶ 2, filed December 11, 2013; Ex. 1, Note.) Golden Circle Financial Service subsequently assigned the Note to Oakwood Acceptance Corporation. (Sec'y Stat., ¶ 2; Ex. 1.) The Note was then assigned to the Secretary pursuant to a Guaranty Agreement between Oakwood Acceptance Corporation and the Government National Mortgage Association ("Ginnie Mae"). (Sec'y Stat., ¶ 3; Declaration of Leslie A. Meaux<sup>1</sup> ("Meaux Decl."), ¶ 4, dated December 2, 2013; Ex. 3, Assignment, dated January 25, 1996.)

The Secretary has attempted to collect the amount due under the Note, but Petitioner remains in default. (Sec'y Stat., ¶ 5; Meaux Decl., ¶ 6.) As a result, Petitioner is alleged to be indebted to the Secretary in the following amount:

(a) \$14,251.09 as the unpaid principal balance.

(Sec'y Stat., ¶ 7; Meaux Decl., ¶ 6.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated October 15, 2012, was sent to Petitioner. (Sec'y Stat., ¶ 6; Meaux Decl., ¶ 7.) 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 terms agreeable to HUD. *Id.* Instead, Petitioner filed a Hearing Request, disputing the terms of the garnishment. (Sec'y Stat., ¶ 8; Meaux Decl., ¶ 8.) However, Petitioner failed to state any basis for the dispute, or provide evidence in furtherance of Petitioner's claim. *Id.* Accordingly, the Secretary proposes a repayment schedule of 10% of Petitioner's disposable income. (Sec'y Stat., ¶ 10; Meaux Decl., ¶ 9.)

## **Discussion**

In the Hearing Request, Petitioner disputed the terms of the proposed garnishment amount. (Hearing Request.) Pursuant to 31 C.F.R. § 285.11 (f)(7)(iii), this Court notified the Petitioner of the December 11, 2013, deadline for the submission of any documentary evidence regarding her claim. (Notice of Docketing, 2.) Following Petitioner's failure to produce documentary evidence by the initial deadline, this Court issued a subsequent order, extending the deadline for Petitioner to prove that all or part of the alleged debt in this case was not past due or not legally enforceable. (Order for Documentary Evidence, dated January 13, 2014.) Nonetheless, Petitioner has failed to provide any evidence to controvert the existence, amount, or validity of the debt.

The Secretary claims that the Petitioner's debt is past due and legally enforceable. (Sec'y Stat., ¶ 7; Meaux Decl., ¶ 6.) 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 Monitoring Director of the Mortgage-Backed Securities Monitoring Division of Ginnie Mae, in which the

---

<sup>1</sup> Leslie Meaux is the Monitoring Director of the Mortgage-Backed Securities Monitoring Division of Ginnie Mae.

Director substantiates the amount owed by Petitioner. (Sec'y Stat., ¶ 3; Note; Meaux Decl., ¶ 6.) Under the clear language of the Note, Petitioner agreed with the lender that she would pay the principal sum, plus interest, until the Note was paid in full. (Sec'y Stat., Ex. 1, Note.)

Pursuant to 31 C.F.R. § 285.11 (f)(8)(i), this Court has determined that the Secretary has successfully met his burden of proof that the alleged debt is past due and legally enforceable against the Petitioner. While Petitioner disputes the garnishment amount, this Court has long-held that "[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).) Having filed no evidence to support Petitioner's claim, the Court, therefore, finds that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

In order to support any claim of financial hardship, Petitioner must prove by a preponderance of the evidence that the terms of the repayment schedule would cause a financial hardship. 31 C.F.R. § 285.11(f)(8)(ii). If financial hardship is demonstrated, this Court may adjust the rate of garnishment accordingly. 31 C.F.R. § 285.11(k)(2); see also Judith Herrera, HUDOA No. 12-M-CH-AWG27 (July 13, 2012).

This Court has provided Petitioner multiple opportunities to file supporting documentation of her financial hardship claim. (Notice of Docketing; Orders.) Despite these opportunities, Petitioner has failed to produce the particularized evidence of financial hardship specified in the Notice of Docketing and the Orders issued by this Court. Accordingly, I find that Petitioner has not demonstrated financial hardship in this case. The Court notes for the record, however, that the Secretary is only seeking to impose administrative wage garnishment at this time, at the rate of ten percent (10%) of Petitioner's disposable pay. (Sec'y Stat., ¶ 10.) Petitioner is further notified that she may be entitled to seek review of her claim of financial hardship in the future should her financial circumstances warrant such review. 31 C.F.R. § 285.11(k)(1).

### **ORDER**

For the reasons set forth above, the Order, dated October 24, 2013, 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 the amount of 10% of Petitioner's disposable income.

**SO ORDERED.**



---

H. Alexander Manuel  
Administrative Judge