

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

In the Matter of:

Aymee Bravo,

Petitioner.

HUDOHA 14-AM-0018-AG-007
Claim No. 780719784

July 31, 2014

DECISION AND ORDER

On October 15, 2013, Aymee Bravo (“Petitioner”) requested a hearing concerning a proposed wage garnishment sought by the Secretary relating 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 U.S. government.

The HUD Secretary has designated the administrative judges of this Office to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. 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.

Background

On June 29, 2004, Petitioner executed and delivered a Consumer Note to National Home Improvement in the amount of \$17,661.00. (Secretary’s Statement (“Sec’y Stat.”), ¶ 2, filed January 21, 2014; Ex. A, Note.) The Note was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act. 12 U.S.C. § 1703. The Note was later assigned to Federal Mortgage & Investment Corporation, who, in turn, subsequently assigned the Note to Hudson United Bank. (Secretary’s Statement (“Sec’y Stat.”), ¶ 3, filed January 21, 2014; Ex. A, Note at p.2).

In accordance with 24 C.F.R. § 201.54, the Note was assigned to the United States of America.¹ (*Id.*) The Secretary is the holder of the Note on behalf of the United States. (*Id.*) Petitioner failed to make payment on the Note as agreed. (Sec’y Stat., ¶ 4.)

The Secretary has attempted to collect this debt from Petitioner, but has been unsuccessful. (Sec’y Stat., ¶ 5; Ex. C, Declaration of Brian Dillon² (“Dillon Decl.”), ¶ 4.) As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

¹ The Note was assigned by TD Bank, NA as the successor by merger to Hudson United Bank. (Sec’y Stat., ¶ 4.)

² Brian Dillon is Director of the Asset Recovery Division at HUD’s Financial Operations Center in Albany, N.Y.

- a) \$10,276.37 as the unpaid principal balance as of December 30, 2013;
- b) \$68.48 as the unpaid interest on the principal balance at 1% per annum through December 30, 2013;
- c) \$759.45 as the unpaid penalties and administrative costs as of December 30, 2013; and
- d) interest on said principal balance from January 1, 2014 at 1% per annum until paid.

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

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent"), dated September 13, 2013, was sent to Petitioner. (Sec'y Stat., ¶ 6; Dillon Decl., ¶5.) In accordance with 31 C.F.R. § 285.11(e)(2(ii)), the Notice of Intent afforded Petitioner the opportunity to enter into a written repayment agreement under mutually agreeable terms to resolve the debt. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 6.) Petitioner did not enter into a repayment agreement or pay the debt in accordance with the Notice of Intent. (Sec'y Stat., ¶ 7)

HUD attempted to obtain a copy of Petitioner's current pay stub. However, to date, Petitioner has not provided a current pay stub to HUD. Therefore, the Secretary proposes a repayment schedule of \$308.45 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay. (*Id.* at ¶ 8).

Discussion

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. 31 C.F.R. § 285.11 (f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists, that the amount of the debt is incorrect or unenforceable, or that the terms of the proposed repayment schedule would cause financial hardship. *Id.*

As evidence of the existence and amount of the debt here, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note and the sworn testimony of the Director of HUD's Asset Recovery Division. I therefore find that the Secretary has met his burden of proof to show that the debt in this case is past due and enforceable.

Petitioner does not dispute the amount of the debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), dated October 15, 2013.) Rather, she disputes the terms of the proposed garnishment. *Id.* I, therefore, find that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

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)). However, if financial hardship is found, the agency will "downwardly adjust" the garnishment amount to reflect the debtor's financial condition. 31 C.F.R. §§ 285.11(k)(3). The burden is on the

Petitioner to present sufficient evidence that the terms of the proposed repayment schedule would cause such financial hardship. 31 C.F.R. § 285.11(f)(8)(ii).

On January 13, 2013, the Court issued a *Notice of Docketing Order, and Stay of Referral* (“Notice of Docketing”), ordering Petitioner to file documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due. Petitioner was also allowed to present evidence that the terms of the repayment schedule are unlawful or would cause a financial hardship to Petitioner. Petitioner did not respond or otherwise comply with the *Notice of Docketing*. On June 4, 2014, the Court issued a subsequent *Order for Documentary Evidence*, informing Petitioner that:

... proof [of financial hardship] must be in the form of documentary evidence and must consist of pay statements and proof of actual payment of necessary household expenses, e.g., receipts, bank statements, and copies of checks, money orders, etc., for payment of mortgage, food, necessary medical expenses, and other basic household necessities.

The *Order for Documentary Evidence* required that Petitioner’s submission must be received by June 25, 2014. Petitioner, again, failed to file any evidence or otherwise comply with that order.

This Court has provided Petitioner multiple opportunities to file supporting documentation to prove financial hardship. (Notice of Docketing; Order for Documentary Evidence.) Despite being extended the opportunity to do so on multiple occasions, Petitioner has failed to produce any evidence in support of her claim or otherwise comply with the orders of this Court. This Court has consistently maintained 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)). Accordingly, I find that Petitioner has failed to meet her burden to present sufficient evidence that the terms of the proposed repayment schedule would cause such financial hardship.

ORDER

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment, dated January 13, 2013, 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 not to exceed fifteen (15) percent of Petitioner's disposable income.

SO ORDERED.

A handwritten signature in black ink, appearing to read "H. Alexander Manuel", written in a cursive style.

H. Alexander Manuel
Administrative Judge