

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

In the Matter of:

Debra Margosian,

Petitioner.

14-VH-0053-AG-021

78-001566-2 0B

October 30, 2014

DECISION AND ORDER

On February 12, 2014, Debra Margosian ("Petitioner") requested a hearing concerning 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 are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if such action is contested by a debtor. 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 both the existence as well as the amount of the alleged debt. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of the 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 Background

Pursuant to 31 C.F.R. § 285.11(f) (4), on February 12, 2014, 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 March 5, 2014, the Secretary filed his *Statement* along with documentation in support of her position. To date, Petitioner has failed to submit documentary evidence in support of her position. This case is now ripe for review.

Findings of Fact

On December 1, 1994, Petitioner executed and delivered a Retail Installment Contract and Security Agreement ("Note") to Builders Choice Remodeling in the amount of \$14,990.00, which was insured against nonpayment by the Secretary, pursuant to Title 1 of the National Housing Act, 12 U.S.C. § 1703. *Secretary's Statement* ("Sec'y Stat.") ¶ 2, Ex. A. Contemporaneously, on December 1, 1994, the Note was assigned by Builders Choice Remodeling to Green Tree Consumer Discount a/k/a/ Green Tree Financial Corporation. *Sec'y Stat.*, Ex. A. Petitioner failed to make payments on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54, on April 16, 1997, Green Tree Financial Corporation assigned the Note to the United States of America. *Sec'y Stat.*, Ex. C, *Declaration of Gary Sautter*,¹ ("Sautter Decl."), ¶ 4.

HUD has attempted to collect this debt from Petitioner, but has not been successful. *Sec'y Stat.* ¶ 5; *Sautter Decl.* ¶ 4. HUD thereby alleges that the Petitioner is indebted to HUD in the following amounts:

- a) \$5,576.01 as the unpaid principal balance as of March 3, 2014;
- b) \$ 0.00 as the unpaid interest on the principal balance at 5% per annum through March 3, 2014;
- c) Interest on said principal balance from March 4, 2014 at 5% per annum until paid.

Sec'y Stat. ¶ 5; *Sautter Decl.* ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment was mailed to Petitioner on July 28, 2009. *Sec'y Stat.* ¶ 6, *Sautter Decl.* ¶ 5. Petitioner entered into a repayment agreement for \$200.00 a month beginning September 2009. *Sec'y Stat.*, ¶ 6, *Sautter Decl.*, ¶ 5.) Petitioner defaulted on the repayment agreement in August 2013. (Id.)

A Wage Garnishment Order was issued to Petitioner's employer on December 10, 2013. Based on the issuance of the Wage Garnishment Order, Petitioner's wages have been garnished three times through March 3, 2014. *Sec'y Stat.* at ¶ 7. The three garnishments are as follows: \$309.53 on February 3, 2014; \$268.76 on March 3, 2014, and \$282.91 which has not yet been remitted to Petitioner's employer. *Sec'y Stat.* at ¶ 7.

Based on Petitioner's pay statement, an administrative wage garnishment at 15% of Petitioner's disposable pay would result in a biweekly repayment schedule of \$209.78. *Sec'y Stat.* ¶ 8. But, the Secretary has determined that 15% of Petitioner's disposable pay would create a financial hardship for Petitioner. Therefore, the Secretary's proposed repayment schedule is now \$150.00 of Petitioner's biweekly pay. *Sec'y Stat.* ¶ 9; *Sautter Decl.* ¶ 11.

¹ Gary Sautter is the Director, Asset Recovery Division, Financial Operations Center of HUD.

Discussion

Pursuant to 31 C.F.R. § 285.11(f) (8) (ii), Petitioner has to present by a preponderance of the evidence that all or part of the subject debt is unenforceable, does not exist, or is not past due. Petitioner claims that the subject debt is unenforceable because she does not owe the amount alleged, and, the terms of the proposed repayment schedule would create a financial hardship for Petitioner. *Petitioner's Hearing Request* ("Hearing Request"), filed February 12, 2014. Petitioner failed, however, to present documentary evidence in support of her position, despite being ordered by the Court on three occasions to do so. *See Notice of Docketing; Order*, dated March 31, 2014; and *Order to Show Cause*, dated May 5, 2014.) As a result, without any evidence in the record to support Petitioner's claims, her claims are considered by the Court as mere allegations. 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 and 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). As a result, the Court finds that Petitioner's claims fail for lack of proof.

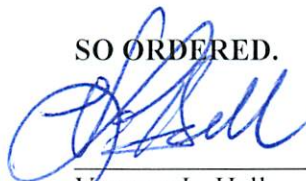
The Secretary has met his burden of proof by presenting evidence that sufficiently supports his position. As support, the Secretary introduced a copy of the Note associated with the property that is the subject of the debt involved in this proceeding. *Sec'y. Stat.*, Ex. A. The Note reflects the terms agreed upon by Petitioner and further shows that Petitioner agreed to pay the remaining balance should default occur. *Sec'y. Stat.*, Ex. A at 2. The Secretary in addition provided a sworn declaration from the Acting Director of HUD's Asset Recovery Division in which the Director substantiated that the debt was legally enforceable against Petitioner. *Sec'y. Stat.*, Ex. C. Without any evidence from Petitioner to otherwise refute or rebut the evidence presented by the Secretary, the Court finds that the Secretary has met his burden of proof and as a result, Petitioner remains legally obligated to pay the alleged debt.

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 the amount of \$150.00 of Petitioner's biweekly pay.

SO ORDERED.



Vanessa L. Hall
Administrative Judge