

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

In the Matter of:

Michele L. Moquin-Leblanc,

Petitioner.

14-VH-0064-AG-026

2013293954A

November 6, 2014

DECISION AND ORDER

On March 13, 2014, Michele L. Moquin-Leblanc (“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 (“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). Thereafter, Petitioner 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 March 13, 2014, this Court stayed the issuance of a wage garnishment order until the issuance of this written decision. *Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”). On March 26, 2014, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file any documentary evidence in support of her position, or in response to the Orders issued by this Court. This case is now ripe for review.

Background

On June 7, 2010, Petitioner executed and delivered a Secured Note ("Note") to Domestic Bank in the amount of \$25,000.00, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1703. *Secretary's Statement* ("Sec'y Stat.") ¶ 2, filed March 26, 2014; Ex. A, Note.

Petitioner failed to make payment on the Note as agreed. *Sec'y Stat.*, ¶ 3; Ex. C, *Declaration of Brian Dillon* ("Dillon Decl."), ¶ 4. "Consequently, in accordance with 24 C.F.R. § 201.54, on August 10, 2012, Admirals Bank fka Domestic Bank assigned the Note to the United States of America." *Sec'y Stat.*, ¶ 3, Ex. B; *Dillon Decl.*, ¶ 4. The Secretary is the holder of the Note on behalf of the United States of America. *Sec'y Stat.*, ¶ 3, Ex. B.

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. *Sec'y Stat.*, ¶ 4; *Dillon Decl.*, ¶ 4. The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$24,234.72 as the unpaid principal balance as of February 28, 2014;
- (b) \$ 839.86 as the unpaid interest on the principal balance at 1% per annum through February 28, 2014;
- (c) \$ 2,248.49 as the unpaid penalties as of February 28, 2014;
- (d) \$ 176.66 as the unpaid administrative costs as of February 28, 2014; and,
- (e) interest on said principal balance from March 1, 2014 at 1% per annum until paid.

Sec'y Stat., ¶ 4; *Dillon Decl.*, ¶ 4.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated November 12, 2013, was mailed to Petitioner. *Sec'y Stat.*, ¶ 5; *Dillon Decl.*, ¶ 5. In accordance with 31 C.F.R. § 285.11(e) (2) (ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under mutually agreeable terms. *Sec'y Stat.*, ¶ 6; *Dillon Decl.*, ¶ 6. Petitioner did not enter into a repayment agreement or pay the debt in full based on the November 12, 2013 Notice. *Id.* An Administrative Wage Garnishment Order was issued to Petitioner's employer. *Sec'y Stat.*, ¶ 7; *Dillon Decl.*, ¶ 7. Petitioner's pay was garnished five times totaling \$1095.08, but HUD records only show that \$643.56 of garnished payments have been posted to Petitioner's account and credited against Petitioner's outstanding balance. *Sec'y Stat.*, ¶ 8; *Dillon Decl.*, ¶ 7.

Based on a review of Petitioner's bi-monthly pay statement for the period ending March 15, 2014, the Secretary proposed a bi-monthly repayment schedule of \$225.76 or 15% Petitioner's disposable pay. *Sec'y Stat.*, ¶ 9; *Dillon Decl.*, ¶ 8.

Discussion

While Petitioner filed a *Request for Hearing*, Petitioner failed to identify what might be the basis for her appeal (e.g. financial hardship, wrong amount claimed, or non-existence of debt). Petitioner also failed to produce documentary evidence in support of her position beyond the submission of a copy of her Consumer Debtor Financial Statement. Because Petitioner failed to provide the necessary documentary evidence to show that the alleged debt was not past due or legally unenforceable, the Court is ill-equipped to consider Petitioner's position or examine any relevant evidence that might support her position. Petitioner was ordered on three occasions to state her position and provide the documentary evidence necessary in support her position but failed to comply with the Orders. *See Notice of Docketing; Order for Documentary Evidence*, dated May 1, 2014; *Order to Show Cause*, dated June 3, 2014. 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)). However, in the absence of an alleged claim, along with the lack of evidence, the Court must find that Petitioner has failed to meet her burden of proof that the subject debt is unenforceable or not past due.

The Secretary claims, on the other hand, that Petitioner's debt is past due and legally enforceable. As support, the Secretary produced a copy of the Note associated with the subject debt. *Sec'y. Stat.*, Ex. A. According to the Note Petitioner agreed that "If I do not pay the full amount of each monthly payment on time, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date I will be in default." *Id.* at ¶ 4 (b). Petitioner further agreed that "...the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount" or, if not due immediately, "the Note Holder will still have the right to do so if I am in default at a later time." *Sec'y. Stat.*, Ex. A at 4 (c). The Secretary also introduced into evidence a sworn declaration from the Director of HUD's Asset Recovery Division in which he provided further support that the subject debt was legally enforceable against Petitioner. *Sec'y. Stat.*, Ex. C.

In the absence of evidence from the Petitioner to either refute or rebut the evidence presented by the Secretary, the Court finds that Petitioner remains legally obligated to pay the full amount of the debt in the amount claimed by the Secretary.

As a final point, Rule 26.4(c) of Title 24 of the Code of Federal Regulation 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).

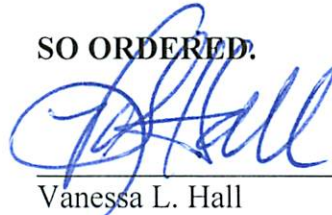
Accordingly, I find that, pursuant to Rule 26.4(c), Petitioner's non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**.

The Secretary is authorized to seek collection of this outstanding debt by means of an administrative wage garnishment in the amount of \$225.76 bi-monthly or 15% of Petitioner's disposable income.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.