

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

In the Matter of:

Veronica M. Thomas,

Petitioner.

14-VH-0072-AG-032

721003690-0A

January 9, 2015

DECISION AND ORDER

On March 19, 2014, Veronica M. Thomas ("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" or "Government"). 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 19, 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 April 18, 2014, the Secretary filed his *Statement* along with documentation in support of her position. Petitioner submitted, along with her *Hearing Request*, certain relevant documentation in support of her position. This case is now ripe for review.

Background

On February 1, 2001, Petitioner executed and delivered to the Secretary a Partial Claim Promissory Note ("Note") in the amount of \$11,876.50. The Note secured a Subordinate Mortgage ("Mortgage") held by the Secretary. *Secretary's Statement* ("Sec'y Stat.") ¶ 2, filed March 26, 2014; Ex. 1, Note.

"As a means of providing foreclosure relief to Petitioner, the Secretary advanced funds to Petitioner's FHA insured mortgage lender and, in exchange for such funds, Petitioner executed the Note in favor of the Secretary." *Sec'y Stat.*, ¶ 3; Ex. 2, *Declaration of Brian Dillon* ("*Dillon Decl.*"), ¶ 4. Based on the terms of the Note, the amount to be repaid becomes due and payable when the first of the following events occurs (i) borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary; (ii) the maturity date of the primary note has been accelerated; (iii) the primary note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary; or (iv) the purchaser as his or her principal residence does not occupy the property. *Sec'y Stat.*, ¶ 4; Ex. 1, ¶ 3. "On or about September 16, 2003, the Petitioner's first mortgage was paid in full and the FHA mortgage insurance was terminated." *Sec'y Stat.*, ¶ 5, Ex. 2, *Dillon Decl.*, ¶ 4.

Accordingly, the Secretary has attempted to collect from Petitioner but without success. The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$ 9,372.99 as the unpaid principal balance as of March 17, 2014;
- (b) \$ 1,811.92 as the unpaid interest on the principal balance at 4% per annum through March 17, 2014;
- (c) \$ 2,099.00 as the unpaid penalties and administrative costs as of March 17, 2014; and,
- (d) Interest on said principal balance from March 18, 2014 at 4% per annum until paid.

Sec'y Stat., ¶ 7; *Dillon Decl.*, ¶ 5.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated January 10, 2014, was mailed to Petitioner at her last known address. *Sec'y Stat.*, ¶ 6; Ex. 2, *Dillon Decl.*, ¶ 6. A Wage Garnishment Order dated February 20, 2014 was issued to Petitioner's employer. A garnishment payment was received from Petitioner's employer on March 17, 2014 in the amount of \$262.50. *Sec'y Stat.*, Ex. 2, *Dillon Decl.*, ¶ 8. The deduction of this payment is reflected in the balance of the unpaid principal. *Id.* Petitioner did not enter into a repayment agreement or pay the debt in full based on the January 10, 2014 Notice.

Petitioner provided the Secretary with a copy of her weekly pay statement that reflected a net weekly disposable income of \$1813.97 for the period ending February 22, 2014. *Sec'y Stat.*, ¶ 10; *Dillon Decl.*, ¶ 9. The Secretary requests authorization of a garnishment repayment

schedule of \$272.00 per pay period, or alternatively, an amount equal to 15% of any amount determined to be Petitioner's disposable income. *Sec'y Stat.*, ¶ 9; *Dillon Decl.*, ¶ 8.

Discussion

Petitioner claims that the proposed garnishment amount will result in financial hardship for her. However, the limited documentary evidence introduced by Petitioner included a copy of her Debt Resolution Program Financial Statement and a proposed settlement offer. *Petitioner's Hearing Request*, (“*Hearing Request*”), Attachments, filed March 19, 2014. The Financial Statement alone, without additional documentation to substantiate the alleged debt, is insufficient to prove Petitioner's claim of financial hardship should the proposed garnishment amount be imposed. 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)). As a result, in the absence of sufficient evidence, the Court must find that Petitioner's claim fails for lack of sufficient proof.

The Government claims, on the other hand, that Petitioner's debt is past due and legally enforceable. The Government now seeks authorization of a repayment schedule to recover the subject debt. As support, the Government produced a copy of the Note in which Petitioner promised to pay the principal sum owed when the ... “Borrower had paid in full all amounts due under the primary Note and related mortgage...insured by the Secretary.” *Sec'y. Stat.*, Ex. 1, ¶ 3 (A)(I). Such has occurred in this case and therefore Petitioner should comply with the terms of the agreement. The Government also introduced into evidence a sworn declaration from the Director of HUD's Asset Recovery Division in which the Director provided further proof that the subject debt was legally enforceable against Petitioner. *Sec'y. Stat.*, Ex. 2. Citing *In re Ray J. Jones*¹ and *August C. Frazier*,² the Government correctly noted that, in order to show extreme financial hardship, Petitioner “must submit ‘particularized evidence,’ including proofs of payment, showing that she will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation.” *Sec'y. Stat.*, ¶ 9. There is no record that Petitioner has provided “particularized evidence” to establish her claim of financial hardship in this case.

Without sufficient evidence from the Petitioner to either refute or rebut the evidence presented by the Secretary, the Court is unable to make a determination about the credibility of Petitioner's claim of financial hardship. Therefore, the Court finds that Petitioner remains legally obligated to pay the subject debt in the amount claimed by the Secretary.

The Court notes, as a final point, that Petitioner wants to negotiate a repayment agreement with the Government. Petitioner submitted a copy of a Debt Resolution Program Settlement Offer in which she offered to pay “\$200.00, or her tax refunds until this debt is paid in full.” The Government has denied Petitioner's request to “repay this debt a[t] \$200.00.” *Sec'y. Stat.*, Ex. 2, *Dillon Decl.*, ¶ 9. This Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Government. Petitioner may want to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial

¹ *Ray J. Jones*, HUDAJF 84-1-OA at 2 (March 27, 1985).

² *August C. Frazier*, HUDALJ 86-05-OA at 2 (April 11, 1986).

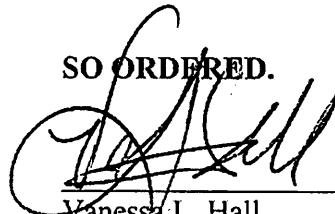
Operations Center (FOC), 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a review of her financial status by submitting a Title I Financial Statement (HUD Form 56142) to the HUD FOC Office.

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 15% of Petitioner's disposable pay.

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.