

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

In the Matter of:

Givonnia Charles,

Petitioner.

15-VH-0079-AG-026

20134222233A

September 7, 2016

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* ("Hearing Request") filed by Petitioner, Givonnia Charles, on June 10, 2015 concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary").

Pursuant to 31 C.F.R. § 285.11(f)(4), on June 10, 2015, the 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") at 2. On July 10, 2015, the Secretary filed his *Statement* along with documentation in support of his position. On October 14, 2015, Petitioner filed her response to the Court's Order for documentary evidence in support of her claim of hardship and unenforceability of subject debt. This case is now ripe for review.

JURISDICTION

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.

BACKGROUND

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, as a result of a defaulted loan that was insured against non-payment by the 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 allegedly owed to the United States government.

On or about March 15, 2002, Petitioner executed and delivered to Vanderbilt Mortgage and Finance, Inc. a Manufactured Home Promissory Note, Security Agreement and Disclosure Statement ("*Note*") in the amount of \$32,963.95. *Sec'y. Stat.* ¶ 2; *Ex. 1, Note*. The *Note* was

insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. *Sec'y. Stat.* ¶ 3; *Ex. 2, Declaration of Kathleen M. Porter*¹, (“*Porter Decl.*”) ¶ 3. Petitioner failed to make payments on the *Note* as agreed, and subsequently the *Note* was assigned to HUD. *Sec'y. Stat.* ¶ 4; *Porter Decl.* ¶ 3. HUD has attempted to collect the amount due under the *Note* but Petitioner remains in default. *Sec'y. Stat.* ¶ 5; *Porter Decl.* ¶ 4. Petitioner is indebted to HUD in the following amounts:

- a) \$ 9,830.10 as the unpaid principal balance as of May 31, 2015;
- b) \$ 0.00 as the unpaid interest on the principal balance at 1.0% per annum through May 31, 2015;
- c) \$ 0.00 as unpaid penalties and administrative costs through May 31, 2015; and
- d) interest on said principal balance from June 1, 2015 at 1.0% per annum until paid.

Sec'y. Stat., ¶ 7; *Porter Decl.* ¶ 4.

Pursuant to 31 C.F.R. §285.11 (e), on March 23, 2015 a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“*Notice*”) was sent to Petitioner. *Sec'y. Stat.*, ¶ 6; *Porter Decl.*, ¶ 5. In accordance with 31 C.F.R. 285.11 (e) (2) (ii), Petitioner was afforded an opportunity to enter into a written repayment agreement. *Sec'y. Stat.* ¶ 8; *Porter Decl.* ¶ 6. Petitioner did not enter into a repayment agreement or pay the debt in full in response to the *Notice*. *Id.* Treasury’s records indicate a Wage Garnishment Withholding Order was issued to Petitioner’s Employer on April 24, 2015. A garnishment payment was received from Petitioner’s employer on May 29, 2015 in the amount of \$168.00. *Sec'y. Stat.*, *Ex. 2, Porter Decl.* ¶ 7. This garnishment has been transmitted to HUD from the U.S. Department of the Treasury, Financial Management Services, and is reflected in paragraph 4 above as HUD has not received the payment from the Department of the Treasury. *Id.*

Petitioner provided HUD with a bi-weekly pay statement for the term ending May 27, 2015. *Sec'y. Stat.*, *Ex. 2, Porter Decl.* ¶ 7, *Ex. A.* After deductions, Petitioner’s bi-weekly net disposable income was calculated to be \$921.46. The Secretary therefore proposes a bi-weekly garnishment of \$138.22 or 15% of Petitioner’s disposable pay. *Sec'y. Stat.* ¶ 10,11; *Porter Decl.* ¶ 8.

Discussion

In Petitioner’s *Statement* she contends, in general, that she does not owe the debt amount claimed by the Secretary and should not be responsible for the remaining balance of the loan. Petitioner claims that “the mobile home was located in Deer Run Mobile Home Park and managed by Clint Schexnayder. The land belongs to Mr. Schexnayder’s in-laws.” *Petitioner’s Statement* at 1. According to Petitioner, “Mr. Schexnayder had talked to Vanderbilt and was left totally in the dark about their arrangements. He [Mr. Schexnayder] repeatedly told me that it was not his fault that I would have to move and placed all of the blame on Vanderbilt Mortgage.” *Id.* Petitioner finally claims, in her *Hearing Request*, that if the subject debt is determined to be owed it would result in a financial hardship for her. There is no record of Petitioner filing any documentary evidence in support of her claims of hardship or unenforceability.

¹ Kathleen M. Porter is the Acting Director of the Asset Recovery Division of HUD’s financial Operations Center.

The Secretary, on the other hand, contends that Petitioner's debt is past due and legally enforceable and, as a result, seeks the Court's authorization of his proposed repayment schedule for Petitioner. The Secretary also contends that Petitioner has not presented any evidence to prove that the subject debt is otherwise "not past due, unpaid and legally enforceable against her." In support of his position, the Secretary produced a copy of the *Note* signed by Petitioner, along with a copy of a sworn declaration from the Acting Director of HUD's Asset Recovery Division in which the debt amount owed by Petitioner is substantiated. See *Sec'y. Stat.*, Ex. 1, *Note*; Ex. 2, *Porter Declaration*, ¶ 4.

In the *Note*, it is evident that Petitioner agreed that if she has not paid the remaining balance "within 30 days after the postmarked date of the notice, Seller may accelerate the maturity of the debt and require Buyer [herein Petitioner] to pay Seller the entire remaining balance due on the contract. Seller may take legal action against Buyer, and Seller may repossess the Manufactured Home." *Sec'y. Stat.*, Ex. 1, *Note* at 3, DELINQUENCY AND DEFAULT. In addition, the record supports the Secretary's assertion that Petitioner has failed to produce any evidence to support her claims as there is no evidence in the record of this proceeding that proves Petitioner's claim of unenforceability or her claim of financial hardship. It is also correct that "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, had Petitioner produced evidence in support of her financial hardship claim, the Court would have been obligated by regulation to consider such evidence of hardship in an administrative wage garnishment case such as this one.² See 31 C.F.R. § 285.11(f)(8)(ii).

Here, Petitioner's claim of financial hardship is merely an allegation in the absence of evidence. In a case involving a claim of financial hardship, Petitioner "must submit 'particularized evidence,' including proofs of payment, showing that [s]he will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation." Ray J. Jones, HUDAJF 84-1-OA at 2 (March 27, 1985). Such did not occur in this case. 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)).

In this case, Petitioner failed to meet her burden of proof. She did not produce any evidence to prove that the subject debt was unenforceable or to prove that the proposed terms of the repayment schedule would result in a financial hardship for her. Without such evidence, the Court finds Petitioner's claim fails for lack of proof. The Court further finds that Petitioner remains contractually obligated to pay the debt amount so claimed by the Secretary.

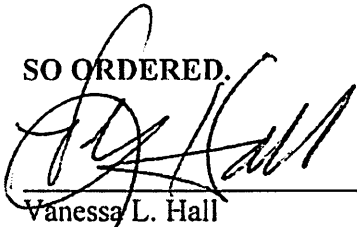
² No regulation or statute currently exists that permits financial hardship to be considered as a basis for determining whether a debt is past-due and enforceable in cases involving debt collection *by means of administrative offset*. (Emphasis added). This Court has maintained that without such regulation or statute, "in administrative offset cases evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable." Edgar Joyner, Sr., HUDBCA No. 04-A-CH-EE052 (June 15, 2005); Anna Filiziana, HUDBCA No. 95-A-NY-T11 (May 21, 1996); Charles Lomax, HUDBCA No. 87-2357-G679 (February 3, 1987). But, by regulation, consideration of financial hardship is permissible in administrative wage garnishment cases.

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.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount equal to 15% of Petitioner's monthly 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.