

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

**Keili Newcomer,**

Petitioner.

16-VH-0011-AG-003

780774524

July 25, 2016

**DECISION AND ORDER**

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (“Hearing Request”) filed by Petitioner, Keili Newcomer, on October 26, 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 November 4, 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”), filed November 4, 2015. Petitioner filed an *Attorney Appearance* form on November 17, 2015. On December 7, 2015, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file sufficient documentary evidence in support of her claim of financial hardship, or in response to the orders issued by this Court. 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 July 29, 2003, Petitioner executed and delivered to Vanderbilt Mortgage and Finance, Inc. an Installment Contract-Security Agreement (“Note”) in the amount of \$40,423.34 in exchange for a Title I insured manufactured home loan. *Sec’y Stat.* ¶ 2; *Note*. The Note was

insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. *Sec'y Stat.* ¶ 3. Petitioner failed to make payments as agreed to in the Note, and the note went into default on or about May 1, 2014. *Sec'y Stat.* ¶ 4. As a result of the default, Petitioner's manufactured home was repossessed and sold in accordance with HUD Handbook 1060.2 Rev. 6, 201.53. *Id.* Vanderbilt Mortgage and Finance, Inc. assigned the defaulted Note to HUD pursuant to the Title I insurance program. *Id.*

Petitioner's outstanding debt was credited with the best price obtainable ("BPO"), pursuant to the guidelines set forth in 24 C.F.R. 201.51(b)(3). *Id.* at ¶ 5. Based upon the appraised value of Petitioner's manufactured home, before repairs, the BPO was \$11,586. *Id.* The actual sales price of the unit was \$11,500. *Dillon Decl.* ¶ 8. After Petitioner's loan balance was credited with the sale proceeds, a deficiency balance remained. *Sec'y Stat.* ¶ 6. HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD in the following amounts:

- (a) \$17,614.55 as the unpaid principal balance as of October 31, 2015;
- (b) \$622.15 as the unpaid interest on the principal balance at 1% per annum through October 31, 2015;
- (c) \$1,128.65 as the unpaid penalties and administrative costs as of October 31, 2015; and
- (d) interest on said principal balance from November 1, 2015 at 1% per annum until paid.

*Sec'y Stat.* ¶ 8; *Dillon Decl.* ¶ 4.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent"), dated October 8, 2015, was sent to Petitioner. *Sec'y Stat.* ¶ 9; *Dillon 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.* ¶ 10; *Dillon Decl.* ¶ 5. Petitioner did not enter into a written repayment agreement or pay the debt in full in response to the Notice of Intent. *Id.*

The Secretary proposed a garnishment repayment schedule in the amount of \$537.93 per month, which the Secretary states will liquidate the debt in approximately three years, as recommended by the Federal Claims Collection Standards. *Sec'y Stat.* ¶ 14; *Dillon Decl.* ¶ 10. Alternatively, the Secretary requests a repayment schedule in an amount equal to 15% of Petitioner's disposable income. *Sec'y Stat.* ¶ 14; *Dillon Decl.* ¶ 10.

### **DISCUSSION**

In Petitioner's Statement, Petitioner disputes the existence or enforceability of the debt because, according to Petitioner, the subject debt was paid when the manufactured home was repossessed and sold. *Hearing Request.* Petitioner's attorney states:

Our client does not believe this alleged debt is due. Our client believes the seller repossessed this mobile home and sold it. If this is the case, the seller should have been made whole and should not be able to have both the mobile home and the alleged debt against it.

*Hearing Request at 1.*

The Secretary claims, on the other hand, that Petitioner's debt is past due and legally enforceable and, as a result, seeks authorization of his proposed repayment schedule for Petitioner. 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 Director of HUD's Asset Recovery Division that substantiates the debt amount owed by Petitioner. At the time of the loan origination, Petitioner received and also signed the *Notice to the Borrower of HUD's Role in Title I Loans* in which Petitioner was informed that if she failed to repay the loan, HUD may foreclose on the property securing the loan and sell it, and Petitioner would be liable for the difference. *Dillon Decl.* ¶ 9; Exhibit 2 at 6.

Petitioner was also informed that the value of the property at the time of foreclosure may be less than the unpaid balance on the loan, and Petitioner would be liable for the difference. *Id.* It is presumed that when Petitioner signed the Note she agreed with the lender that she would pay the unpaid balance resulting from foreclosure. As agreed, subsequent to the lender's resulting repossession and sale of Petitioner's manufactured home, the deficiency balance that remained was assigned to HUD, and now is owed by Petitioner. *Sec'y Stat.* ¶ 12.

According to the Secretary, Petitioner was aware that she would be responsible to repay any balance of the loan remaining after foreclosure and sale of the property. *Id.* But, the Secretary maintains that "Petitioner has not provided any evidence to support her claim that the remaining unpaid balance has been paid" and as such, "absent a showing that the proceeds equaled or exceeded the balance of the partial claim amount, Petitioner remains legally obligated to pay the subject debt." *Id.* The Secretary is correct on this point as case law precedent fully supports his position. Thus, the Court finds that without evidence to the contrary, the subject debt does exist and is past due and enforceable against Petitioner. *See Maura O'Keefe*, HUDBCA No. 86-1194- F202 (January 7, 1986); *Lawrence P. Pappau*, HUDBCA No. 87-2381-G701 (July 31, 1987).

Petitioner next asserts that the proposed garnishment amount requested by the Secretary will create a significant financial hardship. *Petitioner's Affidavit*, filed December 23, 2015. Petitioner indicated that she is considering a Chapter 7 bankruptcy and is willing to settle for a lower amount should that be acceptable to HUD. *Id.*

While financial hardship does not invalidate a debt or release a debtor from the legal obligation to repay it, *Raymond Kovalski*, HUDBCA No. 87-1681-G18 (Dec. 8, 1986), financial hardship is relevant to the amount of administrative wage garnishment that will be allowed. 31 C.F.R. §§ 285.11(f)(2) and (f)(10)(iii). In order to show financial hardship, Petitioner must submit documentary evidence in support of her hardship claim. *Percy Cates*, HUDOHA No. 14-VH-0048-AG-019 (October 30, 2014).

Petitioner has failed to meet her burden of proof because she has not, to date, produce any credible evidence in support of her claim of financial hardship. Petitioner failed to comply with any of the Orders issued by the Court in which she was ordered to file documentary evidence relevant to the enforceability of the debt, to the claim of financial hardship, and to the issuance of the Order of Discharge for Bankruptcy. See Notice of Docketing dated November 4, 2015; Order for Documentary Evidence dated January 4, 2016; Order to Show Cause dated February 8, 2016.

The only evidence reflected in the record from the Petitioner was the resubmission of her sworn affidavit in which Petitioner alleged that she was considering filing for bankruptcy and was willing to negotiate a lower payment with HUD. This evidence, standing alone, does not meet the burden of proof necessary to support a finding that the proposed wage garnishment order would create a financial hardship for Petitioner. It has been consistently maintained by the Court 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)). Thus, Petitioner’s claim for financial hardship fails for lack of proof.

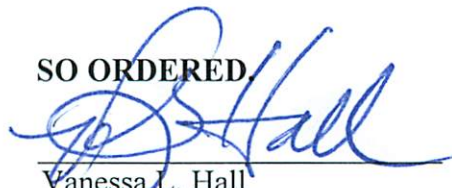
Finally, Petitioner offers that she is “willing to settle for a lower amount should that be acceptable to HUD.” *Petitioner’s Affidavit* at 1. While Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Michael DeMarco, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

### **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 of \$537.93, or alternatively, in an amount equal to 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 upon a showing of good cause.