

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

In the Matter of:

Susan Washington,

Petitioner.

16-VH-0041-AG-013

780774870

March 22, 2017

DECISION AND ORDER

On October 19, 2015, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary").¹ 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.

The administrative judges of this Office have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt 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. § 17.170. 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). Petitioner, thereafter, 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 the repayment schedule are unlawful, would cause a financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.* On February 1, 2016, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, pursuant to 31 C.F.R. § 285.11(f)(4) and (10).

BACKGROUND

On June 16, 1998, Petitioner executed and delivered to Southern Energy Homes Retail, Corp., a Promissory Note ("Note") in the amount of \$26,465.81. *Secretary's Statement* ("Sec'y Stat."), ¶ 2, filed March 2, 2016.

Southern Energy Homes Retail, Corp. assigned the Note to first 21st Century Mortgage Corporation, which in turn assigned to Vanderbilt Mortgage & Finance, Inc.. *Sec'y Stat.*, ¶ 4. After default by Petitioner, the Note was assigned to HUD by Vanderbilt Mortgage & Finance,

¹ *Petitioner's Hearing Request* was not received by the docket clerk until February 1, 2016, thus resulting in delayed filing and response by the Court.

Inc., under the regulations governing the Title I Insurance Program. *Sec'y Stat.*, ¶ 5; Ex. D, *Declaration of Brian Dillon*²(“*Dillon Decl.*”), ¶ 3.

The Secretary has filed a Statement in support of his position that Petitioner is currently in default on the Note and is indebted to the Secretary in the following amounts:

- (a) \$7,246.05 as the unpaid principal balance as of January 30, 2016;
- (b) \$293.25 as the unpaid interest on the principal balance at 1% per annum through January 30, 2016;
- (c) \$485.88 in unpaid penalties and administrative costs as of January 30, 2016; and
- (d) interest on said principal balance from January 31, 2016, at 1% per annum

Sec'y Stat., ¶ 6, Ex. D, *Dillon Decl.*, ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceeding dated September 23, 2015 was sent to Petitioner. *Sec'y Stat.*, ¶ 7. Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD, but has not entered into any such agreement as of September 23, 2015. *Sec'y Stat.*, ¶ 7. The Secretary's proposed repayment schedule is \$225.00 per month, which will liquidate Petitioner's debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of the Petitioner's disposable pay. *Sec'y Stat.*, ¶ 14; Ex. D, *Dillon Decl.*, ¶ 11.

DISCUSSION

Petitioner contends that she does not owe the subject debt because her manufactured home was repossessed, and she received a Cancellation of Debt when it was sold. *Petitioner's Request for Hearing* (“*Hr'g Req.*”), filed February 1, 2016. In addition, Petitioner alleges that the “[p]roposed garnishment would cause financial hardship.” *Id.* In administrative wage garnishment cases, Petitioner may present evidence that the terms of the repayment schedule would cause financial hardship. 31 C.F.R. §285.11(f)(8)(ii). However, Petitioner bears the burden of proving, by a preponderance of the evidence, the terms of the proposed repayment schedule would create financial hardship.

In this case, Petitioner merely provided a copy of a 1099-C Cancellation of Debt from year 2014. *See Hr'g Req.* This evidence alone is insufficient to prove that Petitioner was released from the subject debt and fails to substantiate Petitioner's claim of financial hardship. Despite being ordered twice by the Court to submit additional documentation in support of her claims, Petitioner still failed to comply with any of the Orders. Without such evidence the Court is not sufficiently equipped to determine whether the claims presented by Petitioner are credible.

This Court has previously maintained that “assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due or is unenforceable. Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, without sufficient documentary

² Brian Dillon is the Director of the Asset Recovery Division of HUD's Financial Operations Center.

evidence in the record to refute or rebut the claims presented by the Secretary, the Court finds Petitioner's claims must fail for lack of proof.

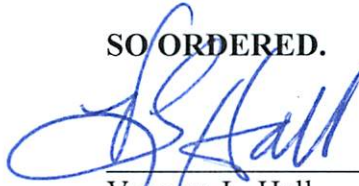
ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding exists and is enforceable in the amount claimed by the Secretary.

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 at \$225.00 per month 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.