

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

In the Matter of:

**Ashley J. Windsor,**

Petitioner.

17-AM-0201-AG-077

780751894

September 4, 2018

**DECISION AND ORDER**

On September 7, 2017, Ashley J. Windsor (“Petitioner”) filed a Hearing Request concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishments as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the administrative judges of this Office to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

**BACKGROUND**

On or about September 9, 2010, Petitioner executed and delivered to Ameritech Construction Corp. a Home Improvement Retail Installment Contract (“Note”) in the amount of \$25,000 that was insured against nonpayment by HUD. (*See* Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed October 24, 2017). The Note was also assigned to South Central Bank, N.A. (*See* Sec’y Stat., Ex. A at p. 4). Under the terms of the loan, Petitioner was to pay the principal amount plus interest on the unpaid balance until the Note was paid in full. (*See* Sec’y Stat., Ex. A at p. 2). The Note cited specific events that could make the remaining unpaid balance of the debt become due and payable, one of which included the “fail[ure] to make a payment within 10 days of when it is due.” (*See* Sec’y Stat., Ex. A at p. 3).

On or about December 17, 2012, and after a default by the Petitioner, South Central Bank, N.A. assigned the Note to the United States of America, with the Secretary as holder on behalf of the United States, in accordance with 24 C.F.R. § 201.54. (*See* Sec’y Stat., ¶ 4; Ex. B; Declaration of Brian Dillon (“Dillon Decl.”), ¶ 3). HUD has attempted to collect on the claim from Petitioner, but Petitioner remains in default. (*See* Sec’y Stat., ¶ 5; Dillon Decl., ¶ 4). As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$19,650.29 as the unpaid principal balance as of September 30, 2017;
- b) \$294.66 as the unpaid interest on the principal balance at 1% per annum through September 30, 2017;
- c) \$1,472.23 as the unpaid penalties and administrative costs through September 30, 2017; and
- d) interest on said principal balance from October 1, 2017, at 1% per annum until paid.

(See Sec'y Stat., ¶ 5; Dillon Decl., ¶ 4).

On July 26, 2016, a Notice of Intent to Initiate Wage Garnishment Proceedings ("Notice") was mailed to Petitioner. (See Sec'y Stat., ¶ 6; Dillon Decl., ¶ 5). Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was given an opportunity to enter into a written repayment agreement under the terms acceptable to HUD (See Dillon Decl., ¶ 6). Petitioner provided a copy of her most recent pay statement for the pay period ending September 30, 2017 (See Sec'y Stat., ¶ 9; Dillon Decl., ¶ 7). As a result, the Secretary proposes a repayment schedule in the amount of \$672.44 bi-weekly or in the alternative, the Secretary proposes a repayment schedule of 15% of the Petitioner's disposable income. (See Sec'y Stat., ¶ 9; Dillon Decl., ¶ 7). The former option is in accordance with the recommendation of the Federal Claims Collection Standards and will liquidate the debt in approximately three years. (See Sec'y Stat., ¶ 9; Dillon Decl., ¶ 7).

## DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. (See 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. (See 31 C.F.R. § 285.11(f)(8)(ii)). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue hardship to Petitioner, or that the collection of the debt may not be pursued due to operation of the law.

As evidence of the Petitioner's indebtedness, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note signed by Petitioner, a copy of the assignment of the Note to HUD, and the sworn declaration of Brian Dillon, the Director of HUD's Asset Recovery Division, substantiating the loan amount. (See Sec'y Stat., Ex. A; Ex. B; Ex. C). Accordingly, the Court finds that the Secretary has met his initial burden of proof.

Petitioner does not dispute the existence of the debt owed to the Secretary, rather Petitioner disputes the amount owed. (See Petitioner's Hearing Request ("Pet'r's Hr'g Req."), dated September 7, 2017). Petitioner acknowledges that she "had a loan placed with HUD around August 2013," but alleges that when she switched banks, she was unable to reach South Central Bank, N.A. or HUD, to inform them of the change. *Id.* Petitioner states that given her payment history, she "should be able to continue [her] payment plan with HUD." *Id.* In support of her position, Petitioner attached her bank statements showing payments to HUD beginning August 12, 2013 and ending April 12, 2016, for a total of \$6,525.00. *Id.*

The Secretary acknowledges Petitioner's payments as part of a voluntary repayment plan entered with HUD on May 23, 2013. (*See* Sec'y Stat., ¶ 8; Dillon Decl., ¶ 8). However, the Secretary contends that Petitioner defaulted on the payment agreement and has made no payments since May 2016. (*See* Sec'y Stat., ¶ 8; Dillon Decl., ¶ 8). Petitioner has offered no evidence to refute this statement. As part of the terms of the Note, titled "Promise to Pay and Payment Terms," it is evident that Petitioner agreed to make payments to South Central Bank, N.A., and subsequently HUD the assignor, until the Note was paid in full. (*See* Sec'y Stat., Ex. A at p. 2). Additionally, the Note contained specific terms under "Default" and "Remedies" that detailed the consequences of a default. *Id.*

Petitioner's payments up to and including April 2016 appear to be calculated in the Secretary's Statement. (*See* Sec'y Stat., ¶ 5; Dillon Decl., ¶ 4). Petitioner has not brought forth any additional evidence to show that she made payments to HUD after April 2016 or otherwise owes less than the Secretary's claimed amount. (*See* Pet'r's Hr'g Req.). 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 enforceable." (*See Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), *citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). In light of the available documentary evidence, Petitioner has not met the burden of proof that the debt was not past due or enforceable, refuting the Secretary's *prima facie* proof of the Petitioner's indebtedness. Without such evidence, the Court finds that Petitioner's claim fails for lack of proof.

Petitioner also appears to ask the Court to "continue [her] payment plan with HUD." This Court only has the authority to make a "determination of whether the debt is enforceable and past due." (*See Edgar Joyner Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005). This Court does not, however, have the authority to establish "a debtor's repayment amount or a schedule of payments." *Id.* As such, 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." *Id.* If Petitioner wishes to discuss a payment plan, Petitioner may discuss the matter with Michael DeMarco the Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859 or write to HUD Financial Operation Center, 50 Corporate Circle, Albany, NY 12203-5121.

Additionally, Petitioner filed additional documentary evidence, providing a copy of her paystub for the pay period ending October 28, 2017. As a result, I, therefore, find that the Petitioner is indebted to HUD in the amount of \$374.68 bi-weekly or in the alternative, a repayment schedule of 15% of the Petitioner's disposable income.

### **ORDER**

For the reasons set forth above, 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 to the extent authorized by law.

**SO ORDERED,**



---

H. Alexander Manuel  
Administrative Judge