
In the Matter of:

Brandie Belcher,

Petitioner

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HUDBCA No. 04-D-SE-AWG45
Claim No. 770928858

Brandie Belcher
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Tacoma, WA 98444

Pro se

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For the Secretary

DECISION AND ORDER

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”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes Federal agencies to utilize administrative wage garnishment as a remedy for the collection of debts owed to the United States Government.

The Administrative Judges of this Board have been designated to determine whether the Secretary may collect the alleged debt by administrative wage garnishment if contested by a debtor. 24 C.F.R. § 17.170(b). This hearing was 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 present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful,

would cause a financial hardship to the Petitioner, or that collection of the debt may not be pursued due to operation of law, 31 C.F.R. § 285.11 (f)(8)(ii). Pursuant to 31 C.F.R. § 285.11 (f)(10)(i), issuance of a wage withholding order was stayed by this Board until the issuance of this written decision.

SUMMARY OF FACTS AND DISCUSSION

On January 2, 1995, Petitioner executed and delivered to Statewide Mortgage Company (“Statewide”) a promissory note (“note”) in the amount of \$25,000 for a home improvement loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. §1703 (g). (Secretary’s Statement, hereinafter “Secy. Stat.,” Exh. 1). Petitioner failed to make payments as agreed in the note. Consequently, Statewide assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54 (2003). (Secy. Stat., Exh. 2). Petitioner is currently in default on the note. The Secretary alleges that Petitioner is indebted to the Government in the following amounts: \$24,923.50 as the unpaid principal balance as of August 30, 2004; \$9,966.75 as the unpaid interest on the principal balance at 5% per annum through August 30, 2004; and interest on said principal balance from September 1, 2004 at 5% per annum until paid. (Secy. Stat., Exh. 3, Declaration of Brian Dillon, hereinafter, “Dillon Decl.,” ¶ 4). The Secretary further alleges that the unpaid principal balance includes a \$1,575.00 payment by Petitioner to HUD through the Treasury Offset Program. (Dillon Decl., ¶ 4).

On September 14, 2000, this Board issued a Decision and Order, finding that Petitioner’s debt to HUD was “legally enforceable against Petitioner in the amount claimed by the Secretary.” (Secy. Stat., Exh. 3(b)). See Brandie Belcher, HUDBCA No. 00-A-SE-AA48 (September 14, 2000). Although this Board in that case authorized the Secretary to collect the debt by means of administrative offset, the Secretary is not precluded from collecting this debt by means of administrative wage garnishment.

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in a specific amount. Petitioner does not dispute existence of the debt or that it is delinquent. Rather, Petitioner contests the enforceability of the alleged debt.

First, Petitioner claims that the debt is not enforceable against her because “she never owned the property that this home improvement loan was taken out on” (Petitioner’s Letter, dated October 5, 2004, hereinafter “Pet. Ltr.”). Petitioner states that she was “young and naïve, and . . . [taken] advantage of . . . by an [individual that] was prosecuted for this scam. Id. Because this debt was previously determined by this Board to be past-due and legally enforceable, Petitioner is not entitled to a subsequent review unless she submits newly discovered material evidence which indicates that the debt is not past-due or legally enforceable. (See 24 C.F.R. § 17.152(d)). Petitioner has submitted no such new evidence. The Board has held that assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due or

enforceable. Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, Petitioner's debt remains past-due and legally enforceable, and the previous Decision and Order determining this matter shall not be modified.

Second, Petitioner contest the amount of interest applied to the debt. Petitioner asserts that, "[a] judge did not find me liable for this debt until October of 2003 [and therefore] [t]here should be no interest until that point." (Petitioner's Hearing Request dated September 10, 2004).

Petitioner is responsible for the accumulated interest on the note by the terms of the note, which secured the loan. Section 2 of the note signed by Petitioner explicitly states:

I will pay interest at a yearly rate of 15.50%.
Interest will be charged on that part of principal
which has not been paid. Interest will be
charged beginning on the Date of Loan and
continuing until the full amount of principal
has been paid.

(Secy. Stat., Exh. 1).

The beginning date of the interest on Petitioner's loan was January 2, 1995 in accordance with section 2 of the note. Id.

When Petitioner defaulted on the note, the holder of the note was entitled to accelerated payment in accordance with section 4 (C) of the note. (Secy. Stat., Exh. 1). This Board finds that because the loan amount is due in full as a result of the Petitioner's default, she is responsible for the accumulated interest on that loan in the amount stated by the Secretary.

Third, Petitioner claims an inability to repay this debt due to adverse financial circumstances. Petitioner states that she has "more than one debt in need of repayment, and I am expecting my first child." Petitioner further states that she has "several judgments against her in the amount of \$9337 [sic] for State Taxes to Labor and Industries." (Pet. Ltr.). The Secretary has submitted a proposed repayment schedule. Petitioner, however, has failed to submit, as ordered, documentary evidence to substantiate her claim that the proposed prepayment schedule would cause financial hardship, or to otherwise comply with or respond to this Board's Order dated September 16, 2004 (Notice of Docketing, Order, and Stay of Referral) and Order dated October 5, 2004. This Board finds that Petitioner failed to submit adequate documentary evidence to substantiate her claim that an administrative wage garnishment in the amount proposed by the Secretary would cause a financial hardship to Petitioner.

Finally, Petitioner has stated in her letter dated October 5, 2004 that she is interested in settling. Petitioner said that she is willing to pay "\$4580" [sic] to settle this

matter. (Pet. Ltr.). While Petitioner may wish to negotiate a settlement, this Board is not authorized to extend, recommend, or accept any settlement offer or payment plan on behalf of the Department. Petitioner may wish to discuss this matter with Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206. Petitioner may also request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

Therefore, upon due consideration of the un rebutted arguments , allegations, and documentary evidence set forth in the Secretary's Statement, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. Furthermore, considering that Petitioner has made no effort to respond to the Secretary's proposed repayment schedule, the Secretary is not obligated to adhere to the proposed repayment schedule when seeking collection of this debt from Petitioner.

ORDER

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.

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is vacated.

Jerome M. Drummond
Administrative Judge

December 8, 2004