

In the Matter of:	:	
	:	
Terrie LaCombe Fritcher,	:	HUDBCA No. 03-A-CH-AWG37
	:	Claim No. 78-052698-1
	:	
Petitioner	:	

Terrie LaCombe Fritcher
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Pro se

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For the Secretary

DECISION AND ORDER ON ADMINISTRATIVE WAGE GARNISHMENT

Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing Urban Development (“HUD”). This alleged debt resulted from a defaulted loan which was insured against non-payment by the Secretary of HUD. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3702D), authorized Federal agencies to utilize administrative wage garnishment as a remedy as for the collection of debts owed to the United States Government.

The administrative judges of this Board have been designated to determine whether this debt is past-due and enforceable against Petitioner and, if so, whether the Secretary may collect the alleged debt by administrative wage garnishment. 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 Petitioner, or that collection of the debt may not be pursued due to operation 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 until the issuance of this written decision.

Summary of Facts and Discussion

On February 25, 1990, Petitioner and her husband, the late Jim LaCombe, executed and delivered to Big “D” Mobile Homes, Inc., (hereinafter “BDMH”) an installment note in the amount of \$25,100.00 for a mobile home loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. BDMH thereafter assigned the note to Green Tree Acceptance of Louisiana, Inc. which now does business under the name Conseco Finance Servicing Corp. a/k/a/ Green Tree Financial Corporation (hereinafter “Conseco”). (Secretary’s Statement, hereinafter, “Sec’y Stat.” Exhs. A, B, and C). Petitioner then defaulted on the note. Conseco assigned the note to the United States of America on September 16, 2002 in accordance with 24 C.F.R. § 201.54. (Sec’y Stat., Exh. C). The Secretary is the holder of the note on behalf of the United States. (Sec’y Stat. at 3, Exh. B). Petitioner is indebted to the United States in the following amounts: \$6,957.41 as the unpaid principal balance as of August 30, 2003; \$367.65 as the unpaid interest on the principal balance at 3% per annum through August 30, 2003; and interest on said principal balance from September 1, 2003, at 3% per annum until paid. (Sec’y Stat., Exh. B, Declaration of Brian Dillon, ¶ 4).

After the filing of the Secretary’s Statement, the Board received Petitioner’s letter dated December 1, 2003 (hereinafter “Pet. Ltr.”). Petitioner stated that the U.S. Department of the Treasury had withheld her child tax credit in the amount of \$400.00 and provided a copy of Treasury’s notice dated July 25, 2003. (Pet. Ltr. Exh. A). The Board then ordered the Secretary to state whether the Petitioner’s child tax credit in the amount of \$400.00 was credited against the debt. The Supplement to the Secretary’s Statement dated January 7, 2004 confirmed that the payment of \$400.00 was reflected in the amount of the debt alleged in its September 25, 2003 Statement. (Supplemental Secretary’s Statement, Exh. A).

The Secretary has filed a Statement and a Supplement with documentary evidence in support of his position that the Petitioner is indebted to the Department in a specific amount. The Petitioner does not challenge the existence of a debt, but rather, challenges the amount of the debt. The Petitioner argues that Mr. Shear, Debt Servicing Representative at HUD’s Albany Financial Operations Center, Albany, NY, advised her by letter dated September 9, 2003 that the Department had paid Conseco \$7,076.66 on November 4, 2002. (Pet. Ltr., Exh. C). Petitioner argues that she should only pay \$3,538.33 which is half of that amount the Department paid to Conseco, and that the Department should collect the remainder of the debt from the estate of her late husband. Neither contention has merit.

Petitioner is mistaken in her assertion that the Department’s payment of \$7,076.66 determines the amount of her debt in whole or in part. The Department’s payment to

Conseco was pursuant to its claim against the United States as an insured lender. The breakdown of Conseco's claim was shown on its HUD-637 Form, "Title I Claim" which was attached to Mr. Shear's September 9, 2003 letter. The subtotal of Conseco's itemized costs of \$7,865.51 included unpaid debt, interest, and legal costs. (Pet. Ltr. Exh. C). Conseco subtracted from that subtotal a coinsurance of \$786.55 that was equal to 10% of \$7,865.51. (Pet. Ltr. Exh. C). Conseco's total claim, therefore, was \$7,072.51. (Pet. Ltr., Exh. C). Conseco, however, received a slightly higher payment (\$7,076.66) as indicated in Mr. Shear's letter. (Pet. Ltr. Exh. C). Petitioner had no part in that claim process, and the amount of her debt was not changed by it.

Conseco's rights to collect the full amount of Petitioner's unpaid debt now belong to the Department. That right was pursuant to Conseco assigning all rights under the original installment contract to the Department. The United States as the assignee assumed the right to collect the total unpaid debt, which is set forth in the Secretary's Statement, and, therefore, its rights are the same as those of the original creditor. See Martha Townsend, HUDBCA No. 87-1695-G32 at 2 (December 30, 1986).

Petitioner also errs in arguing that the Department should collect part of the debt from her husband's estate. Generally, cosigners for a loan are jointly and severally liable to the obligation. "Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together." Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314 at 3 (July 15, 1987). When a husband and wife jointly execute a loan agreement, the death of a spouse does not extinguish a part of the debt, and the surviving spouse is responsible for the entire debt. Thelma Smith, HUDBCA No. 00-A-NY-AA8, at 2 (June 19, 2000). "Petitioner has submitted no evidence, nor has she made a persuasive legal argument to prove that her obligation to repay the debt was extinguished by the death of her husband." Id., citing, Ronald G. Brauer, HUDBCA No. 99-C-CH-Y304 (February 29, 2000). The Secretary, consequently, may collect the full amount of the debt from Petitioner without resorting to any action against her late husband's estate.

Petitioner alludes to unsuccessful efforts to learn about her debt and possibly pay part of it before additional "interest and penalties" had been incurred. She describes discussions with an employee of Allied Interstate about her and her husband each paying half of the debt. (Pet. Ltr.). Petitioner offers no evidence in support of her statements, and the Board has no reason to conclude that settlement of any part of her debt was ever accomplished. Assertions without evidence are not sufficient 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). Additionally, the Board is in no position to speculate as to whether Petitioner would have settled her debt at an earlier time under more favorable circumstances.

Finally, Petitioner contends that she be afforded the opportunity to "negotiate a practical payment method that will not put my family in financial jeopardy." While Petitioner may wish to negotiate repayment terms with the Department, this Board 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 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). In any event, Petitioner has provided no legal or credible factual basis on which this Board can find that she is not liable for repayment of the outstanding balance due on this loan.

ORDER

For the reasons set forth above, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. The Order imposing the stay of referral of this matter to the U.S. Department of 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.

H. Chuck Kullberg
Administrative Judge

Date: January 12, 2004