
In the Matter of:

Roberta K. Vallaster,

Petitioner

HUDBCA No. 03-A-NY-AWG23
Claim No. 78-019356-8

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Pro se

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For the Secretary

DECISION ON ADMINISTRATIVE WAGE GARNISHMENT

Background

Petitioner has 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”). This alleged debt has resulted from a defaulted loan which was insured against non-payment by the Secretary of HUD. This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations. 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). 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.

The 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, and is limited to a review of the written record, unless otherwise ordered. 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 of law. 31 C.F.R. § 285.11(f)(8)(ii).

Summary of Facts and Discussion

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 review of the record of this proceeding 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.

On April 23, 1999, Petitioner executed and delivered to TMS Mortgage Inc., d/b/a The Money Store an installment contract in the amount of \$16,000 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. (Secretary's Statement, hereinafter "Secy. Stat.", Exh. A). Petitioner subsequently defaulted on the note. Consequently, TMS Mortgage Inc., d/b/a The Money Store assigned the note to the United States of America pursuant to 24 C.F.R. § 201.54. (Secy. Stat., Exh. B, at 3). The Secretary is the holder of the Note on behalf of the United States. Id.

Petitioner does not dispute the existence of the debt. Rather, Petitioner disputes the amount of the debt and the terms of the proposed repayment schedule. According to Petitioner, "[a]s of December 30, 2002 the amount that was owed to [HUD] was \$8120.53. The interest [HUD] charged [her] that month was \$33.28." Petitioner states that "on February 11, 2003 [she] received a bill for \$10,531.46. That is a difference of over \$2400." (Petitioner's letter dated April 28, 2003). Petitioner claims that interest charged for the months of January and February should have been the same amount as that charged in December, and the balance due should be \$6,408.53. Petitioner also contends that the proposed repayment schedule would cause adverse financial circumstances. Id.

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts: \$5,112.59 as the unpaid principal balance as of April 30, 2003; \$858.71 as the unpaid interest on the principal balance at 5% per annum through April 30, 2003; \$179.14 as the U.S. Department of Treasury Debt Management Service (DMS) fee; \$1,492.82 as the private collection agency (PCA) fee; and interest on said principal balance from May 1, 2003, at 5% per annum until paid. (Secy. Stat., at 4). These amounts total \$7,643.26 without the inclusion of interest from May 1, 2003.

However, the Secretary's Case Reconstruction Report, which lists payments applied to Petitioner's account as well as DMS and PCA fees charged in September of 2001, indicates that Petitioner's cumulative balance as of April 30, 2003, was \$6,485.16. (Secy. Stat., Exh. C, attachment A; Secy. Stat., Exh. D). It is unclear whether a portion of the DMS and PCA fees claimed in the Secretary's Statement, at paragraph 4, include the DMS and PCA fees reflected in the September, 2001 entry in the Case Reconstruction Report, or whether the fees were incurred in their entirety subsequent to September, 2001, and if so, when. Adding these fees to the \$6,485.16 cumulative balance due on April, 2003 as reflected in the Case Reconstruction Report would total \$8,157.12, not the \$7,643.26 claimed by the Secretary to be due as of April 30, 2003. The Secretary has failed to resolve this discrepancy in the Department's own records with respect to the current outstanding balance due from Petitioner.

Documents received by the Board from the Treasury Department on May 6, 2003 indicate that, even though the Treasury Department on February 14, 2003 offset a Federal payment due Petitioner in the amount of \$1,782, multiple notices to Petitioner from Pioneer Credit Recovery, Inc., a private collection agency, reflect erroneously higher amounts due, both prior to and after this offset. These incorrect amounts are shown to be false both by: (1) the documentary evidence submitted in support of the Secretary's Statement that indicates that the amount due and owing is \$7,643.26 plus interest on this "principal balance from May 1, 2003 at 5.0% per annum until paid," and (2) the Case Reconstruction Report submitted by the Secretary which indicates a cumulative balance due of \$6,485.16. (letters from Pioneer Credit Recovery, Inc. included with Notice of Hearing Request from the Treasury Dept. received by Board, May 6, 2003; Secy. Stat., at 4; Secy. Stat., Exh. C, attachment A; Secy. Stat., Exh. D). Such inaccuracies may also have adversely affected Petitioner's effort to work out a repayment plan with Pioneer Credit Recovery, since Pioneer was under the impression that Petitioner's outstanding balance on this debt was greater than it actually was.

The Secretary has provided no explanation for the discrepancy between the \$6,485.16 Cumulated Balance as reflected on the Department's Case Reconstruction Report (Secy. Stat., attachment to Exh. C) and the amounts listed as due and owing in the Declaration of Lester West (Secy. Stat., Exh. C, at 4), and why DMS and PCA fees, if any, were not listed in the Case Reconstruction Report subsequent to those listed in September of 2001.

Lester West, Director of the Department's Financial Operations Center, states:

HUD employee Thomas Sharlow, contacted the Petitioner, by phone on May 12, 2003, to request a copy of her current pay stub. During the May 12th phone conversation, Petitioner informed Mr. Sharlow that she is paid weekly and would fax the pay stub for the period ending May 1, 2003. Petitioner faxed HUD a pay stub on May 12, 2003 (Exhibit B). According to the pay stub, Petitioner's gross year-to-date earnings of \$21,547.60, less allowable year-to-date deductions of \$5,533.55 indicate a net disposable pay of \$16,014.05, for 4 months of 2003. Based on this record, 15% of the Petitioner's average monthly disposable income of \$4,003.51 is \$600.52. If Administrative Wage Garnishment is authorized, a garnishment at 15% would result in a repayment schedule under such a garnishment order equal to \$600.52 per month. (Secy. Stat., Exh.C, at 9).

However, it is not clear that "a garnishment order equal to \$600.52 per month" would not cause financial hardship to Petitioner. The "Taxes and Deductions" section of Petitioner's weekly pay statement indicates that amounts of \$132.77 and \$39.17 were deducted for the apparent repayment of two separate "SRP Loan[s]," and another \$360 was deducted for "Hosp Cr Un," presumably a credit union payment, although it is not clear whether this \$360 weekly deduction is directed to a savings account at this credit union or to pay off an existing loan. In any event, it would appear that at least \$171.94 per week of Petitioner's pay is being directed

toward the repayment of two loans, an amount which is certainly significant when one notes that the amount of the direct deposit which was transferred by Petitioner's employer into her personal account for other personal expenses for this week was only \$286.86.

While Petitioner has failed to submit to this Board any other documentary evidence which would prove that the repayment schedule proposed by the Secretary would cause a financial hardship to her, Petitioner states in her letter of April 28, 2003, to Pioneer Credit Recovery, Inc.:

On or about April 4, 2003, I spoke with a Ms. Marie Taylor from your company. I tried to work out a payment plan with her but she would not accept my terms. She wanted \$676 a month from me until the loan was paid off. How could I afford something like that.... I was willing to pay \$200 per month but she would not accept it.... [T]here is no way I can afford \$676 per month. I have enclosed copies of my bills and notices from my tax returns.

While a copy of Petitioner's letter was received by the Board from the U.S. Department of the Treasury on May 5, 2003 along with several documents related to Petitioner's hearing request, "copies of [Petitioner's] bills" as referenced in her letter were not received from the Treasury Department by the Board for its consideration of these enclosures.

In any event, the Secretary has clearly shown that the issuance of wage garnishment order to achieve repayment of this outstanding debt is justified. Nevertheless, it is my conclusion, based upon a review of the entire record of this proceeding, that the Secretary's pursuit of a wage "garnishment order equal to \$600.52 per month" would be an inappropriate financial imposition because, based upon the nature, number, and sum of certain current deductions from Petitioner's disposable pay, the terms of the Secretary's proposed repayment schedule would cause a financial hardship to the debtor. 31 U.S.C. § 285.11(f)(8)(ii). Consequently, it is my determination that a wage garnishment order not in excess of \$100 per week would be appropriate under the circumstances of this case.

If Petitioner wishes to further negotiate repayment terms with the Department, Petitioner may wish to discuss this matter with counsel for the Secretary or 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 that HUD Office a Title I Financial Statement (HUD Form 56142).

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 of \$6,485.16 plus interest on said principal balance from May 1, 2003 at 5.0% per annum until paid. 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 in an amount not to exceed \$100 per week.

David T. Anderson
Administrative Judge

Date: July 28, 2003