

In the Matter of:

JO DEAN WILSON,

Petitioner

HUDBCA No. 03-A-CH-AWG09
Claim No. 7-80224827

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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 February 4, 1997, Petitioner and Billy R. Moore executed and delivered to State Home Exteriors an installment note in the amount of \$15,575.00 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). Thereafter, State Home Exteriors assigned the note to the Federal National Mortgage Association. Petitioner subsequently defaulted on the note. Consequently, the Federal National Mortgage Association assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54. The Secretary is the holder of the Note on behalf of the United States. (Secy. Stat., at 3; Secy. Stat., unmarked Exh.). Petitioner is indebted to the Secretary in the following amounts: \$14,124.15 as the unpaid principal balance as of December 2, 2002; \$1,469.19 as the unpaid interest on the principal balance at 6% per annum through December 2, 2002; \$467.80 as the U.S. Department of Treasury Debt Management Service fee; \$3,898.34 as the private collection agency (PCA) fee; and interest on said principal balance from December 2, 2002, at 6% per annum until paid. (Secy. Stat., at 4; Secy. Stat., Exh. B).

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner asserts that the debt is not legally enforceable against her because: (1) her divorce decree released her from the debt at issue; (2) she is only responsible for one half of the debt; and (3) wage garnishment would cause significant financial hardship to Petitioner. (Secy. Stat., at 6; Petitioner's Letter dated December 19, 2002, hereinafter "Pet. Ltr.").

First, Petitioner contends that she is no longer liable to the terms of the note pursuant to her divorce decree. Though Petitioner acknowledges that the note originally held both parties jointly and severally liable, she contends that the divorce decree released her from all prior obligations regarding this debt. Petitioner asserts that the divorce decree "awarded the house to Mr. Moore and required Mr. Moore to pay, completely, the debt associated with the house, including the debt at issue here." (Pet. Ltr.; Pet. Ltr., Exh. 1). Further, Petitioner argues that she signed a Special Warranty Deed which "grant[ed] all of her interest in the house and the associated debt to Mr. Moore in connection with the divorce." (Pet. Ltr., Pet. Ltr., Exh. 2). Based on the terms of the divorce decree and her former husband's sole possession of the property, Petitioner contends she is no longer liable for the debt at issue.

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). A divorce decree purporting to release Petitioner from this joint obligation does not affect the claims of an existing creditor unless the creditor was a party to the action. Wendy Kath, HUDBCA No. 89-4518-L8, at 2 (December 26, 1989). In this case, neither the Secretary nor the lender were parties to the divorce action, thus binding Petitioner to her prior contract obligations. Petitioner's divorce decree only determined rights and liabilities between Petitioner and her former spouse. Kimberly S. King (Theide), HUDBCA No. 89-4587-L74 (April 23, 1990). Petitioner may enforce the divorce decree against her ex-husband in state or local court to recovery monies paid to HUD by her to satisfy this obligation. However, this does not preclude the Secretary from enforcing this debt against Petitioner. Deborah Gage, HUDBCA No. 86-1276-F283 (January 14, 1986). Therefore, Petitioner remains jointly and severally liable to the contract at issue and the Secretary has the right to enforce the obligation against her individually.

Second, Petitioner contends that she is "only responsible for one-half of the debt." (Pet. Ltr.). However, since Petitioner is jointly and severally liable with her former husband for repayment of the debt, the Secretary may proceed against any cosigner for the full amount of the debt. For Petitioner not to be held liable for the full amount of the debt, there must either be a release in writing from the lender

specifically discharging Petitioner's obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986). Petitioner has submitted no evidence to establish the requirements for a valid release. Therefore, the Secretary has the right to enforce the obligation against Petitioner individually.

Finally, Petitioner contends that a wage garnishment for any part of the debt would cause a financial hardship to Petitioner. 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 that 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.

David T. Anderson
Administrative Judge

Date: January 30, 2003