



**Board of Contract Appeals**  
U. S. Department of Housing and Urban Development  
Washington, D.C. 20410-0001

In the Matter of:

**DEBRA GREEN,**

Petitioner

HUDBCA No. 03-A-CH-AWG29  
Claim No. 77-0769245

Debra Green  
6827 Misty Field Drive  
Converse, TX 78109-3414

Pro se

Michael Berke, Esq. Office of  
Regional Counsel U. S .  
Department of Housing and Urban  
Development  
77 West Jackson Boulevard  
Chicago, Illinois 60606-3507

For the Government

**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"). 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. § 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 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 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 until the issuance of this written decision.

### **Summary of Facts and Discussion**

On May 8, 1991, Petitioner and her spouse jointly and severally executed and delivered to Greentree Acceptance of Texas, Inc., an installment note in the amount of \$9,544.00 for a home improvement loan. (Secretary's Statement, hereinafter "Secy. Stat.," Exh. A). The Secretary insured the loan against nonpayment pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secy. Stat., para. 2). Greentree Acceptance of Texas, Inc. assigned the note to First Trust National Association. Petitioner failed to make payments as agreed to on the note. Subsequently, On September 28, 1994, First Trust National Association assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54 (2002). (Secy. Stat., para. 3, unmarked exhibit). The Secretary's documents further show that the Petitioner is indebted to the Secretary in the following amounts: \$8,198.07 as the unpaid principal balance as of July 30, 2003; \$2,433.30 as the unpaid interest on the principal balance at 3% per annum through July 30, 2003; \$318.94 as the U.S. Department of Treasury fee; \$2,657.85 as the private collection agency fee; and interest on said principal balance from August 1, 2003 at 3% per annum until paid. (Secy. Stat., Exhibit B, Declaration of Glen Goodman).

Petitioner does not dispute the existence or amount of the debt or that the debt is in default. Rather, Petitioner asserts, in opposition to the Department's claim that the alleged debt is past due and legally enforceable, that, under the terms of a divorce decree, liability for repayment of the loan in question has been transferred or otherwise assigned to Petitioner's former spouse. (Petitioner's Letter, dated August 2, 2003, and unmarked exhibits).

Petitioner's reliance upon the terms of a divorce decree which purports to release Petitioner from any obligation to repay the subject debt is not a valid defense to this action. In this matter, both Petitioner and Petitioner's former spouse jointly and severally executed and delivered the installment note. Where a property settlement or divorce decree purports to release one spouse from a joint obligation, the claims of the existing creditors against that spouse are not affected unless the

creditors were parties to the action. In the Matter of Deborah Gage, HUDBCA No. 86-1727-F286 (January 14, 1986); see also, 27B C.J.S. Divorce §251 (4) (1959); 63 A.L.R. 3d 373, 403-04 (1975).

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 the rights and liabilities between Petitioner and her ex-husband. Kimberly S. King (Theide), HUDBCA No. 89-4587-L74 [April 23, 1990]. Petitioner may enforce the terms of the divorce decree against her ex-husband in state or local court to recover monies paid to HUD by her to satisfy this obligation. Nevertheless, Petitioner remains jointly and severally liable to repay this debt and the Secretary may legally pursue recovery of the full amount of this outstanding obligation from Petitioner.

#### **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.

A handwritten signature in dark ink, appearing to read "D. Anderson", with a stylized flourish at the end.

David T. Anderson  
Administrative Judge

October 3, 2003