

In the Matter of:

MARIE O. GAYLOR,
Petitioner

HUDBCA No. 03-D-NY-AWG04
Claim No. 78-0331165-8

Marie O. Gaylor
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Petitioner, 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 February 11, 1997, Petitioner executed and delivered to Oakwood Mobile Homes, Inc. a note for a loan that was insured against non-payment by the Secretary of HUD pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. Oakwood Mobile Homes, Inc. thereafter assigned the note to Oakwood Acceptance Corporation. After Petitioner defaulted on the note, Oakwood Acceptance Corporation assigned the note to the United States of America pursuant to 24 C.F.R. § 201.54. The Secretary is the holder of the note on behalf of the United States. Petitioner is indebted on the note in the following amounts: \$5,663.00 as the unpaid principal balance as of October 30, 2002; \$226.56 as the unpaid interest at 6% per year through October 30, 2002; \$176.69 as a U.S. Department of Treasury Debt Management Service Fee; \$1,472.39 as a private collection agency fee; and interest on the principal balance from November 1, 2002 at 6% per year, until the debt is paid. (Secretary's Statement, hereinafter "Secy. Stat.", Exhs. A, B, C).

Petitioner does not dispute on the existence or amount of the debt at issue. Rather, Petitioner contends that the debt was discharged when Petitioner returned the manufactured home to the lender, and the home was sold. Repossession of the collateral by the lender does not relieve a debtor of liability. Theresa Russell, HUDBCA No. 87-2776-H301 (Mar. 24, 1988). Petitioner became liable for the debt when Petitioner signed a note. Petitioner has failed to prove a release of the obligation because Petitioner has submitted no documentary evidence that she was given a written release by the lender specifically discharging her obligation, or that the lender accepted valuable consideration from Petitioner, indicating an intent to release. James Ragsdale, HUDBCA No. 88-3065-H580 (Aug. 3, 1988).

Next, Petitioner asserts that administrative wage garnishment of her disposable pay would cause her employment to be terminated. (Pet. Ltr. stamped received Oct. 22, 2002). Petitioner, who is currently employed as a cashier in a grocery store, has offered no evidence that administrative wage garnishment would result in her job being terminated sometime in the future. 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).

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 for the 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.

Jerome M. Drummond
Administrative Judge

February 7, 2003