



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

In the Matter of:

Irma J. Bejarano,
Petitioner

HUDOA No. 10-H-CH-AWG115
Claim No. 780231095OB

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Pro se

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For the Secretary

DECISION AND ORDER

On August 16, 2010, 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”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment a mechanism for the collection of debts owed to the United States Government.

The administrative judges of this Office have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. 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 show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.*

Pursuant to 31 C.F.R. § 285.11(f)(4), on August 17, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated August 17, 2010.)

Background

HUD’s claim file contains significant documentary evidence indicating that the Petitioner obtained a Title-I insured loan of \$25,000 on October 1, 1998. (Secretary’s Statement (“Sec’y Stat.”) ¶ 1, Exs. A, B, C, Dillon Decl. ¶¶ 4-5.) HUD is unable to produce a full copy of the Note that serves as the basis for collection of this claim. The Note, as a legal document, was removed from the claim file, which contains loan servicing documents, to be placed in the HUD office vault for safeguarding. The second page of the Note was subsequently misplaced. (Sec’y Stat., ¶ 2, Ex. 1, Dillon Decl., ¶ 3.) The Petitioner defaulted on the loan, and the loan was subsequently assigned to HUD in exchange for a claim payment of \$23,594.04 on July 3, 2000. (Sec’y Stat., ¶ 3, Ex. 1, Dillon Decl., ¶ 4.)

The Secretary has attempted to collect on the Note from Petitioner, but Petitioner remains in default. (Sec’y Stat., ¶ 5, Dillon Decl., ¶ 5.) The Secretary has filed a Statement in support of his position that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$24,581.79 as the unpaid principal balance as of August 31, 2010;
- (b) \$12,676.24 as the unpaid interest on the principal balance at 5.0% per annum through August 31, 2010; and
- (c) interest on said principal balance from September 1, 2010, at 5.0% per annum until paid.

(Sec’y Stat., ¶ 5, Ex. 1, Dillon Decl., ¶ 7.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated August 6, 2010 was sent to Petitioner. (Sec’y Stat., ¶ 6, Ex. 1, Dillon Decl., ¶ 8.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was offered the opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec’y Stat., ¶ 7, Ex. 1, Dillon Decl., ¶ 9.) As of September 3, 2010, Petitioner had not entered into a written repayment agreement and also had not provided a current pay stub. (Sec’y Stat., ¶ 8, Ex. 1, Dillon Decl., ¶ 10.) The Secretary now proposes “a 15% repayment schedule or \$1,110.00 per month, which would liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards.” (Sec’y Stat., ¶ 9, Ex. 1, Dillon Decl., ¶ 10.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists or that the terms of the proposed repayment schedule would cause her financial hardship. Petitioner states that the debt in this proceeding does not exist and that she does not owe the debt because of a “Bankruptcy Chapter 7 filed 1999-2000 during a 16 year marriage.” (Petitioner’s Request for Hearing, “Hr’g Req.,” dated August 16, 2010). Petitioner failed, however, to provide the necessary documentation in support of her

bankruptcy claim. Petitioner was ordered twice to submit documentary evidence that would otherwise render the alleged debt unenforceable. (Order, "Sept. Order", dated September 8, 2010; Order to Show Cause, "Oct. Order", dated October 5, 2010.)

It should also be noted that Petitioner claimed that her "divorce [was] effective April 26, 2010." Beyond Petitioner's acknowledgement of the effective date of her divorce, Petitioner again failed to submit any documentary evidence that proved that her divorce released Petitioner from her legal obligation to pay the alleged debt, despite being ordered twice to do so. (Sept. Order, Oct. Order.) This Office has previously held that co-signers of a loan are jointly and severally liable to the obligation, and as a result, "a creditor may sue the parties to such obligation separately or together." *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). As such, "the Secretary may proceed against any co-signer for the full amount of the debt" because each co-signer is jointly and severally liable for the obligation. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). For Petitioner not to be held liable for the subject debt, she must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

In the instant case, Petitioner has failed to produce evidence of a written release from her obligation to pay the alleged debt or evidence of valuable consideration paid to HUD in satisfaction of the debt, thus rendering the alleged debt unenforceable. While the Petitioner may be divorced from her ex-spouse, there is no evidence from the Petitioner that either the Secretary or the lender was a party to the divorce action. So as a recourse, Petitioner may seek to enforce, in the state or local court, the divorce decree that was granted against her ex-husband so that Petitioner may recover from her ex-spouse monies paid to HUD by her in order to satisfy this legal obligation. See *Michael York*, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3. I find, therefore, without proof of a written release, Petitioner remains legally obligated to pay the alleged debt as a co-signer on the Note.

Without sufficient evidence from Petitioner, the Secretary's position remains unrefuted. This Office has previously held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable." *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, I find that Petitioner's claim, challenging the amount of the alleged debt, must fail for lack of proof.

As a final point, Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any

appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*. (emphasis added).

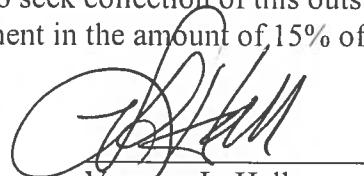
Accordingly, because Petitioner has also failed to comply with any of the Orders issued by this Office, I find that Petitioner's non-compliance to the Orders issued by this Office provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding is enforceable in the amount alleged by the Secretary.

The Order imposing the stay of referral of this matter to the U.S. Department of the 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 the amount of 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

December 17, 2010