



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

In the Matter of:

Loretta Smith,

Petitioner

HUDOA No. 10-H-CH-AWG25
Claim No. 7335580940

Loretta Smith
5900 Skypointe Dr. #1132
Las Vegas, NV 89130

Pro se

James Webster, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

On January 6, 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 as 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. This 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. 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 a 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) and (10), on January 6, 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.

Background

On July 8, 2002, Petitioner executed and delivered to the Secretary a Subordinate Note (“Note”) promising to repay a partial claim paid on her behalf by the Secretary to cure the arrearages on her primary FHA-insured mortgage and avoid the foreclosure of her home. (Secretary’s Statement (“Sec’y Stat.”), filed January 19, 2010, ¶ 2, Ex. B.) The Note cited specific events that made the debt become due and payable, one of these events being when Petitioner has paid in full all amounts due under the primary note and related mortgage insured by the Secretary. (Sec’y Stat., ¶ 4, Exs. B and C, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD (“Dillon Decl.”), dated January 15, 2010, ¶ 4.) On or about July 13, 2004, the FHA mortgage insurance on the original note was terminated as the mortgagee indicated the mortgage was paid in full. (Sec’y Stat., ¶ 4, Ex. C, Dillon Decl., ¶ 4.)

Therefore, pursuant to the terms and conditions of the Note, payment is due in full for the partial claims note because the amounts due under the primary note have been paid in full. (Sec’y Stat., ¶ 5.) The Secretary has made efforts to collect from Petitioner but has been unsuccessful. (Sec’y Stat., ¶ 6, Ex. C, Dillon Decl., ¶ 5.) Petitioner is justly indebted to HUD in the following amounts:

- (a) \$7,206.50 as the unpaid principal balance as of December 30, 2009;
- (b) \$648.54 as the unpaid interest on the principal balance at 4% per annum through December 30, 2009;
- (c) interest on said principal balance from January 1, 2010 at 4% per annum until paid.

(Sec’y Stat., ¶ 3, Ex. C, Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated December 8, 2009 was sent to Petitioner. (Sec’y Stat., ¶ 7, Ex. C, Dillon Decl., ¶ 6.) As of January 15, 2010, Petitioner has not entered into a written repayment agreement. (Sec’y Stat., ¶ 8, Ex. C, Dillon Decl., ¶ 7.) A Wage Garnishment Order dated December 8, 2009 was issued to Petitioner’s employer. (Sec’y Stat., ¶ 7, Ex. C, Dillon Decl., ¶ 6.) HUD attempted to obtain a copy of Petitioner’s current pay stub, but one was not provided. (Sec’y Stat., ¶ 9, Ex. C, Dillon Decl., ¶ 8.) As a result, the Secretary proposes that 15% of Petitioner’s disposable income is a reasonable amount to garnish pursuant to 31 C.F.R. § 285.11(i)(A). (Sec’y Stat., ¶ 9, Ex. C, Dillon Decl., ¶ 8.)

Discussion

Petitioner claims the alleged debt that is the subject of this proceeding does not exist and that she does not owe the debt because “[she] pa[id] [her] house in full and the debt was attached to [the] back end of the loan.” (Petitioner’s Request for Hearing, filed January 6, 2010.) Petitioner failed, however, to provide the necessary documentation in support of her claim.

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that no debt exists or that the amount of the debt is incorrect. On three separate occasions, this Office ordered Petitioner to file such evidence in support of her claim. (Notice of Docketing, Order, and Stay of Referral, dated January 6, 2010; Order, dated January 20, 2010; and Order to Show Cause, dated February 19, 2010.) Petitioner failed to comply with the directives in each of these Orders.

This Office has consistently maintained that “[w]ithout documentary evidence from the Petitioner, this Office is unable to determine whether the alleged debt does not exist or is not owed in the full amount alleged by the Secretary, as required under 31 C.F.R. § 285.11(f)(8)(ii).” See *Mary Baker*, HUDBCA No. 05-D-NY-AWG06 (March 23, 2005). Therefore, I find Petitioner’s claim fails for lack of proof.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be past due and 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

June 1, 2010