



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

In the Matter of:

Dana Rongitsch,
Petitioner

HUDOA No. 10-H-CH-AWG82
Claim No. 721003302

Dana Rongitsch
3518 County Road #101
Minnetonka, MN 55345

Pro se

Carol Turner, Esq.
U.S. Department of Housing and
Urban Development
Office of Regional Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

On April 28, 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. 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 May 11, 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 May 11, 2010.)

Background

On February 2, 2001, Petitioner and Daniel Rongitsch executed and delivered to the Secretary a Promissory Note in the amount of \$9,191.34. Secretary's Statement ("Sec'y Stat."), filed June 7, 2010, ¶ 2, Ex. A.) The loan funds were advanced to the Petitioner's FHA-insured lender to bring Petitioner's mortgage current to avoid foreclosure. (Sec'y Stat. ¶ 3, Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl.") ¶4.) The Note also provides that it becomes due when borrower has paid in full all amounts due under the primary note and related HUD-insured mortgage. (Id., Ex. A, Note, § 4(A)(I) and (III)).

On or about March 11, 2002, the FHA mortgage insurance on the primary note was terminated when the primary lender informed the Secretary that the primary note was paid in full. (Sec'y Stat., ¶ 5, Dillon Decl., ¶ 4.) As a result, pursuant to the terms and conditions of the Subordinate Note, payment was due in full on March 11, 2002.

Petitioner is currently in default on the Note. The Secretary has made efforts to collect from Petitioner other than by administrative wage garnishment but has been unsuccessful. The Secretary has filed a Statement in support of his position that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$5,166.99 as the unpaid principal balance as of April 30, 2010;
- (b) \$0.00 as the unpaid interest on the principal balance at 4% per annum through April 30, 2010; and
- (c) interest on the principal balance from May 1, 2010 at 4% per annum until paid.

(Sec'y Stat., ¶ 6, Dillon Decl., ¶ 5, Ex. B.)

A Notice of Intent to Initiate Administrative Wage Garnishment dated October 28, 2009, was sent to Petitioner. (Sec'y Stat., ¶ 6, Dillon Decl., ¶ 6.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD but, to date Petitioner had not entered into such an agreement. (Sec'y Stat., ¶ 7; Ex. B, Dillon Decl., ¶ 7.)

A Wage Garnishment Order dated November 27, 2009, was issued to Petitioner's employer. (Sec'y Stat., Ex. B, Dillon Decl.) Based on the issuance of the garnishment order, Petitioner's pay has been garnished 18 times totaling \$1,771.14. (Sec'y Stat., Ex. B, Dillon Decl., ¶ 9.) Petitioner has requested to have the garnishment reduced to \$100.00 per month. The Secretary will accept a reduction in the weekly garnishment amount from \$97.67 to \$23.07. (Sec'y Stat., Ex. B Dillon Decl., ¶ 10.)¹

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 amount of the alleged debt is

¹ Sec'y Stat. referred to § 3 when in fact it was § 4.

incorrect. Petitioner may also 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. 31 C.F.R. § 285.11(f)(8)(ii).

Petitioner claims the proposed repayment schedule would create a financial hardship. Petitioner states “My husband moved out in May 2009. We are in the process of divorce. Due to financial difficulties & receiving no child support from him I would like my garnishment amount to be reduced to \$100/mo. I cannot provide for myself or children at this point due to the amount [of] garnishment from me.” (Hearing Request from Petitioner, “Pet’r Hr’g Req.,” dated May 6, 2010.) As support, Petitioner provided a copy of her Financial Statement that listed her weekly income and also identified her monthly expenses. However, such evidence proved to be insufficient without supporting documentation such as copies of bills incurred, or copies of cancelled checks or receipts that documented proof of payments of monthly bills, credit cards, or other related expenses. Petitioner was ordered on three occasions to provide such documentation but Petitioner failed to comply with the Court’s Orders. (Notice of Docketing, Order, and Stay of Referral, dated May 11, 2010; Order, dated June 2, 2010; Order to Show Cause, dated July 20, 2010.)

The Secretary, on the other hand, has considered Petitioner’s request to have the Wage Garnishment reduced to \$100.00 per month. (Sec’y Stat., Ex. B, Dillon Decl., ¶ 10.) The Secretary submits that he “will accept a reduction in the weekly garnishment amount from \$97.67 to \$23.07.” (Id.) The Financial Statement that Petitioner provided cannot, alone, sufficiently support Petitioner’s claim of financial hardship. Without evidence from Petitioner to prove that the reduced amount would still create a financial hardship, the Petitioner’s claim fails for lack of proof. This Office has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” *Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing, *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Therefore, Petitioner remains legally obligated to pay the alleged debt, due to her failure to sufficiently prove her claim of financial hardship.

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).

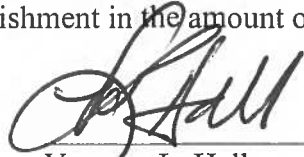
Accordingly, because Petitioner has also failed to comply with any of the Orders issued by this Office, I find that Petitioner’s non-compliance to the Orders issued provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

ORDER

Based on the foregoing, it is my determination that the amount to be garnished in satisfaction of the debt that is the subject of this proceeding shall not exceed the weekly garnishment amount of \$23.07 per week as claimed 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 \$23.07 per week.



Vanessa L. Hall
Administrative Judge

August 27, 2010