



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

In the Matter of:

**Diane Sweet,**

Petitioner.

HUDOA No. 10-H-NY-AWG54  
Claim No. 5493586 LL 9244

Diane Sweet  
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Pro se

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For the Secretary

**DECISION AND ORDER**

On February 22, 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 are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if 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 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 February 24, 2010, this Office stayed the issuance of a

wage withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral, dated February 24, 2010.)

### **Background**

On January 10, 1992, Petitioner executed and delivered to Rocky Top Mobile Homes, a Retail Installment Contract (“Note”) in the amount of \$27, 661.06, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec’y Stat. ¶ 2; Sec’y Stat. Ex. A, Note.) Contemporaneously, on January 10, 1992, the Note was assigned by Rocky Top Mobile Homes to Logan-Laws Financial Corporation. (Sec’y Stat. ¶ 3; Note, p. 2.) Logan-Laws Financial Corporation failed to comply with the Government National Mortgage Association (“GNMA”) mortgage-backed securities program requirements and was defaulted by GNMA. (Sec’y Stat., Ex. B, Declaration of Paul St. Laurent, “St. Laurent Decl., Director, Mortgage-Backed Securities Monitoring Division of GNMA of HUD ¶ 4.) As a result of the default, GNMA took over the loan. (Id.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec’y Stat. ¶ 5.)

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD. The Secretary alleges that Petitioner is currently in default and is indebted to HUD in the following amounts:

- (a) \$2,753.46 as the unpaid principal balance;
- (b) \$0 as the unpaid interest on the principal balance at 13% per annum through February 22, 2008; and
- (c) interest on said principal balance from February 23, 2008 until paid.

(Sec’y Stat. ¶ 6; St. Laurent Decl. ¶ 6).

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated July 1, 2008 was sent to Petitioner. (Sec’y Stat. ¶ 7.) In accordance with 31 C.F.R. §285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms but has not done so. (Sec’y Stat. ¶ 8.) The Secretary proposes a repayment schedule of 7% of Petitioner’s disposable pay. (Sec’y Stat. ¶ 9.)

### **Discussion**

Petitioner does not dispute the existence of the debt. Rather, Petitioner argues that she does not owe the full amount of the debt because she “was not even notified to dispute [the] garnishment when it originated.” (Petitioner’s Request for Hearing, “Pet’r’s Hr’g Req.,” filed on February 23, 2010.) 31 C.F.R. § 285.11 states that:

“[a]t least 30 days before the initiation of garnishment proceedings, the agency shall mail, by first class mail, to the debtor’s last known address a written notice informing the debtor of: ... (ii) The

intention of the agency to initiate proceedings to collect the debt through deductions from pay...(ii) An explanation of the debtor's rights...and the time frame within which the debtor may exercise his or her rights...." 31 C.F.R. § 285.11(e)(1)(i)-(iii).

In order to address the issue of notice raised by Petitioner, this Office ordered the Secretary to, "certify to this Office that he has provided legal and sufficient notice to the Petitioner's last known address regarding the debt that is the subject of this proceeding." (Order, July 20, 2010.) On August 3, 2010, the Secretary filed a certification stating that on July 1, 2008, the Notice of Intent was sent to Petitioner at 3341 Melissa Way #11, Kodak, TN 37764-2380, which was the last known address at that time for Petitioner. (Sec'y Certification ¶ 3.) This address was obtained from Petitioner's tax return. (*Id.*) Petitioner has not provided evidence to rebut the claim of the Secretary. Unless otherwise advised by Petitioner of a change of address or a different address, reliance upon Petitioner's last known address of official records is appropriate. As such, this Office finds that the Secretary has met his burden to prove that Petitioner was given sufficient notice as required by 31 C.F.R. § 285.11.

Petitioner also claims that "from the information I have received it was illegal for me not to have been given at least an opportunity to be heard." (Petitioner's Letter ("Pet'r's Letter"), filed March 15, 2010.) On February 24, 2010, this Office sent a Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing") to Petitioner at the address she provided in her Request for Hearing. The Notice of Docketing specifically stated that:

"within 30 days of the date of this Order, PETITIONER SHALL FILE documentary evidence which will prove that all or part of the alleged debt is either unenforceable or not past due...Petitioner may also present evidence that the terms of the repayment schedule are unlawful or would cause a financial hardship to Petitioner."  
(Emphasis in the original.)

(Notice of Docketing, Order, and Stay of Referral, dated February 24, 2010.) On March 15, 2010, Petitioner responded thereafter: "I was never offered the opportunity before this ...to dispute the garnishment...." (Pet'r's Letter.) However, Petitioner did not submit any documentary evidence to dispute the administrative wage garnishment or support her financial hardship claim even though she was ordered to do so. On March 25, 2010 and May 6, 2010, this Office ordered Petitioner to submit documentary evidence in support of her position, and thus provided Petitioner with two additional opportunities to be heard, and also to dispute the proposed garnishment. (Order, dated March 25, 2010; Order to Show Cause ("May Order"), dated May 6, 2010.) Petitioner failed to comply with these Orders. She neither filed documentary evidence nor requested an extension of time to file supporting documentation. Thus, I find Petitioner's claim to be without merit.

Petitioner further claims that administrative wage garnishment in the amount sought by the Secretary would create a financial hardship on Petitioner. Specifically, Petitioner states "I don't know if you know what it feels like to go hungry...My son has gone to school with not even money for lunch...." (Pet'r's Letter.) while this Office acknowledges Petitioner's financial

circumstances, case law precedent has established that “financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it.” *Shone Russell*, HUDOA No. 09-H-NY-KK15 (June 25, 2009) (citing *Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986)). However, the existence of financial hardship may require a mitigation of the amount of the garnishment allowable by law. 31 C.F.R. §§ 285.11(k)(3). But, in order to prove the existence of financial hardship, Petitioner has to produce sufficient evidence to substantiate her claim of hardship. Although Petitioner’s claim of financial hardship is valid, Petitioner has failed to submit any documentary evidence such as pay statements, bills, and receipts in support of her claim. This Office has consistently held that “[a]ssertions 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). Since Petitioner has not offered any evidence that would prove that payment of the debt would create financial hardship, I find that Petitioner’s claim fails for want of proof.

Lastly, Petitioner has suggested her willingness to “make a payment arrangement that would at least have given me some lee way [sic] to be able to live at a normal level.” (Pet’r’s Letter.) This Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Petitioner may wish to discuss this matter with either Counsel for the Secretary or to submit a HUD Office Title I Financial statement (HUD Form 56142) to 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.

Although Petitioner has failed to submit proof of financial hardship at this time, Petitioner may, at any time, file a Motion for Reconsideration and “request a review by the agency of the amount garnished based on materially changed circumstances such as disability, divorce or catastrophic illness which result in financial hardship.” 31 C.F.R. § 285.11(k)(1). If Petitioner files a Motion for Reconsideration, she shall still be required to submit sufficient documentation in support of her claim of financial hardship. 31 C.F.R. § 285.11(k)(2).

### **ORDER**

Accordingly, this Office finds that the debt that is subject of this proceeding is legally enforceable against Petitioner in the amount of seven (7) percent of Petitioner’s disposable income. It is hereby

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at seven (7) percent of Petitioner’s income per pay period.



Vanessa L. Hall  
Administrative Judge

August 25, 2010