



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

In the Matter of:

Cynthia A. Acosta,
Petitioner

HUDOA No. 10-M-CH-AWG15
Claim No. 721005778

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For the Secretary

DECISION AND ORDER

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 (f)(10), on November 18, 2009, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision, unless a wage garnishment order had previously been issued against Petitioner.

Background

On June 19, 2003 and on July 7, 2004, Petitioner executed and delivered to the Secretary two Partial Claims Promissory Notes ("Notes") in the amount of \$ 9,697.66, in exchange for foreclosure relief being granted by the Secretary. (Secretary's Statement ("Sec'y Stat."), filed December 1, 2009, ¶ 1; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶¶ 4-5.) The Notes cite specific events which render the debt due and payable, one of which is the payment in full of the primary note and mortgage insured by the Secretary. (Dillon Decl., ¶ 4; Sec'y Stat., ¶¶ 3-5; Notes, Ex. A ¶ 4(3)(A), Ex. B ¶ 4(3)(A).) On or about September 27, 2007, the FHA insurance on Petitioner's primary mortgage was terminated, as the lender indicated that the mortgage was paid in full. (Sec'y Stat. ¶ 4; Dillon Decl., ¶ 4.) HUD has attempted to collect on the claim from Petitioner, but Petitioner remains delinquent. (Sec'y Stat. 6; Dillon Decl., ¶ 5.)

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

- (a) \$9,697.66 as the unpaid principal balance as of November 30, 2009;
- (b) \$339.36 as the unpaid interest on the principal balance at 3.0% per annum through November 30, 2009; and
- (c) interest on the principal balance from December 1, 2009, at 3.0% per annum until paid.

(Sec'y Stat., ¶ 2; Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated October 27, 2009, was mailed to Petitioner. (Sec'y Stat., ¶ 7; 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 with HUD under terms acceptable to HUD. Petitioner failed to enter into a written repayment agreement. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 7.) HUD attempted to obtain Petitioner's pay stub, but Petitioner failed to provide one. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 8.) As a result, the Secretary proposes an administrative wage garnishment in the amount of 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 9.)

Discussion

Petitioner claims that she does not owe the debt because it does not exist. The basis for Petitioner's claim is that Petitioner does not recall signing the documents. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed November 17, 2009.) Petitioner also claims that the terms of

the repayment would cause a financial hardship and proposed a counter offer of \$50.00 of the monthly salary. (Petitioner's Letter dated April 12, 2010.)

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, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause financial hardship. On November 18, 2009, this Court ordered Petitioner to file documentary evidence to prove that all or part of the alleged debt to HUD in this case is either unenforceable or not past due. (Notice of Docketing, Order, and Stay of Referral, dated November 18, 2009.) Petitioner was also ordered to file documentary evidence proving that repayment of the debt would cause her financial hardship. (*Id.*) Petitioner failed to comply with this Order.

Additionally, this Court ordered the Secretary to file the proposed repayment schedule required under 31 C.F.R. § 285.11(3)(2)(ii), as well as documentary evidence proving that Petitioner's alleged debt to HUD is enforceable and past due. (*Id.*) On December 1, 2009, the Secretary filed the Secretary's Statement, setting forth the documentary evidence in support of the claim against Petitioner for the debt owed to HUD. (Sec'y Stat.)

On February 18, 2010, a second Order was issued ordering Petitioner to file the same information sought in the Notice of Docketing, Order, and Stay of Referral. (Order, dated February 18, 2010.) This Order stated that "failure to comply with this Order shall result in a decision based on the documents in the record of this proceeding." (*Id.*)

On April 15, 2010, Petitioner filed a letter dated April 12, 2010, a "Consumer Debtor Financial Statement", and a copy of her paystub. Petitioner states that "if garnishment needs to be set on [her] salary that [this Office] would please consider not more than \$50.00 a pay-period" because "if [this Office] takes[s] more it will basically hurt [Petitioner] again." (Petitioner's Letter dated April 12, 2010.)

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship. Petitioner was ordered to file "documentary evidence which will prove that repayment of the debt would cause a financial hardship to Petitioner," and "to prove financial hardship, Petitioner's documentary evidence should not be limited to a mere list of expenses, but instead must include proof of payment of household expenses." (Notice of Docketing, Order, and Stay of Referral dated November 18, 2009.) Petitioner's filed "Consumer Debtor Financial Statement" is just a list of expenses and so is insufficient evidence to substantiate her claim of financial hardship.

Without sufficient documentary evidence from Petitioner, this Office is unable to determine whether the administrative wage garnishment sought by the Secretary would constitute a financial hardship for Petitioner as required under 31 C.F.R. § 285.11(f)(8)(ii). *Mary Baker*, HUDBCA No. 05-D-NY-AWG06 (March 23, 2005). Therefore, I find Petitioner's claim of financial hardship fails for lack of proof.

ORDER

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 to the extent authorized by law.



H. Alexander Manuel
Administrative Judge

July 6, 2010