



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

In the Matter of:

ROMANA PERRY JOHNSON,
Petitioner

HUDOA No. 10-M-NY-AWG57
Claim No. 5528282 LL 9244

Romana Perry Johnson
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For Petitioner

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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 February 24, 2010 this Office stayed referral of this matter to the U.S. Department of the Treasury until the issuance of this written decision.

Background

On February 21, 1993, Petitioner executed and delivered to NC Mobile Home Corp. dba Life Styles ("NC Mobile Home Corp.") a Retail Installment Contract ("Note") in the amount of \$29,890.00 which was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y Stat."), filed March 31, 2010, ¶ 2, Ex. A.) Contemporaneously, on February 21, 1993, the Note was assigned by NC Mobile Home Corp to Logan Laws Financial Corporation ("Logan Laws"). (Sec'y Stat., ¶ 3; Declaration of Paul St. Laurent, III, Director, Mortgage-Backed Securities ("MBS") Monitoring, Government National Mortgage Association ("GNMA" or "Ginnie Mae"), United States Department of Housing and Urban Development ("St. Laurent Decl."), dated March 31, 2010, ¶ 3, Ex. B.) Logan Laws subsequently went out of business due to its failure to comply with Ginnie Mae MBS Program requirements, and GNMA took over their loans. (Sec'y Stat., ¶ 4; St. Laurent Decl., ¶ 4.) Petitioner failed to make payments as agreed to in the Note. As GNMA (division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec'y Stat., ¶ 4; St. Laurent Decl., ¶ 5.)

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

- (a) \$21,967.90 as the unpaid principal balance;
- (b) \$13,383.16 as the unpaid interest on the principal balance at 13% per annum through September 24, 2009; and
- (c) interest on said principal balance from September 25, 2009 until paid.

(Sec'y Stat., ¶ 6; St. Laurent Decl., ¶ 6.) The Secretary has made efforts to collect from Petitioner, but has been unsuccessful. (*Id.*)

A Notice of Intent to Initiate Wage Garnishment Proceedings, dated January 7, 2010, was sent to Petitioner, affording her an opportunity to enter into a repayment agreement as required by 31 C.F.R. § 285.11(e)(2)(ii). (Sec'y Stat., ¶¶ 7-8; St. Laurent Decl., ¶7.) On March 18, 2010, Ginnie Mae sent Petitioner another letter indicating that due to her financial hardship, Ginnie Mae was willing to waive interest payments and garnish less than 15% of Petitioner's wages provided that Petitioner submitted the requested financial information. (St. Laurent Decl., ¶¶ 7-8, Exhibit B.) On March 22, 2010, Petitioner submitted the required documentation. (*Id.*) Based on a review of Petitioner's financial documents, the Secretary's proposed repayment schedule is 7% of Petitioner's disposable pay per pay period. (Sec'y Stat., ¶ 9; St. Laurent Decl., ¶ 8.)

Discussion

On February 10, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment related to a debt owed to HUD. Although unclear, Petitioner

seems to argue that: (1) the debt doesn't exist; (2) if the debt does exist, the statute of limitations for collecting on the debt has passed, and (3) repayment of the debt would cause Petitioner financial hardship. Petitioner states "No one can tell me what the debt is for. When asking over the telephone [,] the lady on the other end said I should know. If this is for the [the] mobile home this loan is 18 years old." ((Petitioner's Hearing Request ("Pet'r Hearing Request").)

In addition, on February 19, 2009, Petitioner submitted a written request for hearing in which she states, "I am a single mom and grandmother and am struggling." "I was in bankruptcy the year of April 2004 [through] Mar[ch] 2006 with my ex-husband Raymond Johnson. My bankruptcy was discontinued because of a divorce of 14 y[ea]rs of marriage. I can send you a letter showing where I got a continuation of automatic stay to continue my bankruptcy." "This debt with Urban Housing [has] been delinquent for 18 years and was under the bankruptcy. The mobile home was eligible for sale and [has] been sold to new owners. I have other obligations and bills to pay along with going through divorce, I ASK THE COURT FOR MERCY in re-evaluat[ing] this debt." ((Petitioner's February 19, 2010 Letter ("Pet'r Feb. 19, 2010 Ltr.").) On March 15, 2010, Petitioner submitted an additional written statement in which she "enclosed documentary evidence that repayment of this debt claimed by the secretary would create financial hardship." ((Petitioner's March 15, 2010 Letter ("Pet'r Mar. 15, 2010 Ltr.").)

First, 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 incorrect. Beyond a mere allegation that the debt does not exist, Petitioner has not submitted documentary evidence in support of her position. However, the Secretary has filed his Statement, along with supporting documents; thus, the Secretary has met his initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i).

Second, there is no statute of limitations for administrative wage garnishment cases. In the case of *In Re Douglas P. Hansen* (Decision Order and Reconsideration), HUDBCA No. 06-A-CH-AWG03 at 3 (February 13, 2007), "the Office of Appeals adopted the holding of the U.S. Supreme Court in *BP America Prod. Co v. Burton*, 127 S.Ct 638,643 (2006) and reversed its decision in the initial *Hansen* decision by finding that no statute of limitations exists in administrative proceedings without the inclusion of a clear, legislative time period by Congress." *In Re Karen T. Jackson* (Decision and Order), HUDOA No. 09-H-NY-AWG87 at 3 (June 3, 2009). Thus, Petitioner's statute of limitations defense is without merit.

Finally, in support of Petitioner's argument that repayment of the debt would cause Petitioner financial hardship, Petitioner submitted a number of financial documents including: Petitioner's bi-weekly pay stub, checks, receipts, and bills showing a record of payments due, utility bills, automobile payment expenses, medical and insurance payments due, credit card payments, and loans from financial investment income. (Pet'r Mar. 15, 2010 Ltr. and attachments ("attachs.").) Petitioner's bi-weekly pay statement for the pay period ending February 20, 2010, indicates that her gross pay totals approximately \$1,506.51 bi-weekly, or \$ 3,013.02 monthly. (*Id.*) Petitioner's disposable pay is determined "after the deduction of health insurance premiums and any amounts required by law to be withheld . . . [including] amounts for deductions such as social security taxes and withholding taxes . . ." 31 C.F.R. § 285.11(c). After subtracting approximately \$ 79.61 for medical and dental insurance, \$ 111.37

for federal and state taxes, and \$ 109.19 for Medicare and Social Security, Petitioner is left with a bi-weekly disposable pay of \$ 1,206.34 bi weekly, or \$ 2,412.68 monthly. (Pet'r Mar. 15, 2010 Ltr. and attachments ("attachs."))

Petitioner also submitted copies of checks and other bank records showing payments for the following household expenses: \$ 23.65 for car insurance, \$ 53.38 for life insurance, \$ 478.00 for two medical bills, equivalent to approximately \$ 39.83 per month, \$ 249.95 for utilities, \$ 46.57 per year in vehicle taxes, totaling approximately \$ 3.88 per month, \$ 68.80 for 401(k) hardship loan payments, approximately \$ 252.19 for food and toiletries from Wal-Mart, Food Union, and Family Dollar. Petitioner's evidence of payments for cable television, cellular phone service, and a Belk credit card bill were not credited in full by this Office because Petitioner has not established that they are payments for essential household expenses. However, because Petitioner did not submit a home landline bill and uses her cell phone to communicate with her 16 year old daughter, this Office will credit Petitioner \$ 60.00 in cell phone expenses. The aforementioned monthly expenses total \$ 751.68, or \$ 375.84 per pay period.

This Office has determined that credit may be given for certain essential household expenses, such as food and utilities, where Petitioner has not provided bills or other documentation, yet the "financial information submitted by Petitioner...[was found to be] generally credible..." *David Herring*, HUDOA No. 07-H-NY-AWG53 (July 28, 2008) (*citing Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). In accordance with *Loera*, this Office will credit Petitioner with \$750.00 for rent and \$200.00 for Petitioner's car payment totaling \$950.00 per month, or \$ 475.00 bi-weekly. Therefore, Petitioner's essential household monthly expenses total \$ 1,701.68, or \$ 850.84 per pay period.

Given that Petitioner submitted the financial information requested by Ginnie Mae for a repayment plan, the Secretary has proposed a new repayment schedule of 7% of Petitioner's disposable pay, rather than the 15% currently being garnished. (Sec'y Stat., ¶ 9; Decl. of St. Laurent, ¶ 8.) As stated above, Petitioner's monthly disposable income amounts to \$ 2,412.68, or \$ 1,206.34 per pay period and I find that Petitioner's necessary monthly expenses total \$ 1,701.68, or \$ 850.84 per pay period. Thus, Petitioner earns approximately \$ 711.00 more than her necessary monthly expenses, or \$ 355.5 more per pay period. Based on the evidence presented, Petitioner is able to pay the proposed repayment of 7% of Petitioner's disposable pay, or approximately \$ 168.88 per month, or \$ 84.44 per pay period

This Office finds that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount proposed by the Secretary.

ORDER

Upon consideration of the arguments, allegations, and documentary evidence set forth above, I find that the debt is legally enforceable against Petitioner in the amount claimed by the Secretary. 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 7% of Petitioner's disposable income based on the calculations provided above. The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.



H. Alexander Manuel
Administrative Judge

April 21, 2010