

OFFICE OF HEARINGS AND APPEALS  
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-0001

In the Matter of:

**Nina Spiewak,**

Petitioner

HUDOA No. 11-H-CH-AWG133  
Claim No. 721006854  
Date: April 24, 2012

**DECISION AND ORDER**

On August 22, 2011, 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 a mechanism for the collection of debts owed to the United States Government.

The administrative judges of this Court 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 August 23, 2011, this Court 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 August 23, 2011.)

**Background**

As a means of providing foreclosure relief, HUD advanced funds to Petitioner’s FHA-insured lender to bring Petitioner’s mortgage current. To secure repayment, Petitioner executed a Subordinate Note (“Note”) in favor of the Secretary. The amount borrowed under this Note was \$11,020.80. (Secretary’s Statement (“Sec’y. Stat.”), filed September 19, 2011, ¶ 1, Ex. 2.)

The Note cited specific events that made the debt become due and payable, one of these events being if the Petitioner has paid in full all amounts due under the primary note and related mortgage insured by the Secretary. (Sec’y. Stat., Ex. 2, Declaration of Brian Dillon, Director, Financial Operations Center in HUD (“Dillon Decl.”), dated September 6, 2011, ¶ 4.) On or about October 1, 2010 the FHA Insurance on the first mortgage was terminated, as the lender indicated the mortgage was paid in full. (*Id.*)

HUD has attempted to collect on the claim from Petitioner, but Petitioner remains delinquent. Petitioner is indebted to HUD on the claim in the following amounts:

- (a) \$11,020.80 as the unpaid principal balance as of August 31, 2011;
- (b) \$73.44 as the unpaid interest on the principal balance at 1% per annum through August 31, 2011; and
- (c) interest on said principal balance from September 1, 2011, at 1% per annum until paid.

(Sec'y. Stat., §§ 4-5, Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated July 18, 2011 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. As of the date of this Declaration, Petitioner had not entered into a written repayment agreement, in response to the July 18, 2011 Notice. (Sec'y. Stat., ¶ 7; Dillon Decl., ¶ 8.) A Wage Garnishment Order dated August 18, 2011, was issued to the Petitioner's employer. (Sec'y. Stat., ¶ 8; Ex. 2, Dillon Decl., ¶ 9.) As of September 6, 2011, Petitioner has not provided HUD with a current paystub. (Sec'y. Stat., ¶ 9; Ex. 2, Dillon Decl., ¶ 10.) As a result, the Secretary's proposed repayment schedule is \$317.35 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards or 15% of Petitioner's disposable pay. (Sec'y. Stat., ¶ 10, Dillon Decl., ¶ 10.)

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

In this case, Petitioner claims that she does not owe the debt because, "the title company that handled the sale of the house assured us that this debt was included in the payoff amt." (Pet'r's Hr'g. Req., dated Aug. 12, 2011.)

As support, Petitioner provides a copy of a letter from William Leach, the closing attorney at her settlement. In this letter, Mr. Leach acknowledges that the alleged debt was not satisfied with the settlement proceeds and then advises Petitioner

[W]hile my office should have collected the payoff and sent it in to HUD, the two of you, as co-signers on that Promissory Note, are ultimately and legally responsible for the debt. By your signature on the Settlement Statement, you certified to my office and to the government that the Settlement Statement was accurate in regards to debts owed against the property.

(*Id.*)

Additionally Petitioner, by her own admission, acknowledges the existence of the alleged debt. More specifically, Petitioner states

I'm not disputing the fact that this debt occurred; I am saying that...we were lead [sic] to believe that [the debt in this case] was to be paid out of the closing settlement. Tom Haire, the principal holder of the mortgage, is supposed to have retained an attorney to see why Mr. Leach (closing attorney) didn't take care of the matter at the time of closing.<sup>1</sup>

(Pet'r's. E-mail, dated Nov. 28, 2011.)

Beyond Petitioner's allegations, she has failed to produce sufficient documentary evidence that substantiates her claim, despite being ordered to do so by this Court on three occasions. (Notice of Docketing, p. 2; Order, dated Oct. 20, 2011; Order to Show Cause, dated Nov. 16, 2011.)

On November 28, 2011, Petitioner did submit to the Court an e-mail in which she claimed that, "I have called the HUD office several times during this period and have repeatedly been told that all I could do is wait for the Judges [sic] decision. I was told that I had already submitted the necessary paperwork. I don't know what more I can do." Petitioner also states, "If there is something more required from me, please notify me to let me know exactly what it is [the Court] want[s]." (*Id.*)

While Petitioner claims that she is not familiar with how to proceed in this case, each order issued by the Court specifically set forth what was required of Petitioner in order to meet her burden of proof. The Court is not an advocate required to speculate which documents or evidence in Petitioner's possession would best support a finding in Petitioner's favor. Instead, the Court is a neutral fact-finder responsible for relying on the evidence presented by both parties to the Court so that the Court can reach a decision best supported by the facts presented in the record. (*See* 24 C.F.R. §26.2 (the hearing officer [administrative judge] shall conduct a *fair and impartial* hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order.)

In this case, the evidence presented by Petitioner is insufficient. Without the necessary evidence to meet her burden of proof in support of her claim, Petitioner's claim will fail for lack of evidence. This Court 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." *See Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (*citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)) Accordingly, I find that, due to lack of sufficient evidence, the alleged debt in this case is past due and enforceable in the amount claimed by the Secretary.

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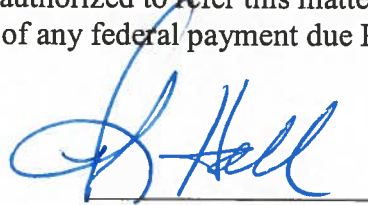
<sup>1</sup> No attorney has appeared or filed any evidence on Petitioner's behalf.

**ORDER**

Based on the foregoing, the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset is **VACATED**.

It is hereby **ORDERED** that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any federal payment due Petitioner.



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Vanessa L. Hall  
Administrative Judge