



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

In the Matter of:

Melody Brown,
Petitioner

HUDOA No. 11-H-CH-AWG29
Claim No. 770228234-OB

Melody Brown
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Stevensville, MT 59870

Pro se

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For the Secretary

DECISION AND ORDER

Petitioner filed a request for 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 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 November 24, 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 November 24, 2010.)

Background

Melody A. Brown a/k/a Melody Brown (“Petitioner”) and Kenneth E. Brown executed and delivered to Miracle Mile Mobile Homes Inc. a Manufactured Home Retail Installment Contract and Security Agreement (“Note”) in the amount of \$6,5372.20[sic]. (Secretary’s Statement (“Sec’y Stat.”), filed December 20, 2010, ¶ 2, Ex. A.) This Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Id.) Petitioner failed to make payments as agreed on the Note, and the Note was subsequently assigned to HUD. (Id.) After default by Petitioner, the Note was assigned to HUD by Green Tree Acceptance, Inc., under the regulations governing the Title I Insurance Program. (Sec’y Stat., Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD (“Dillon Decl.”), dated December 13, 2010, ¶ 3.)

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

- (a) \$11,973.12 as the unpaid principal balance as of November 30, 2010;
- (b) \$10,954.91 as the unpaid interest on the principal balance at 6.0% per annum through November 30, 2010; and
- (c) interest on said principal balance from December 1, 2010, at 6.0% per annum until paid.

(Sec’y Stat., ¶ 7, Ex. B, Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated October 29, 2010 was sent to Petitioner. (Dillon Decl., ¶ 5.) 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 the Dillon Declaration, Petitioner has not entered into a written repayment agreement. (Sec’y Stat., ¶ 6, Dillon Decl., ¶ 6.) As a result, the Secretary proposes a repayment schedule of \$631.88 per month, which will liquidate the debt in approximately three years, or 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 19, Dillon Decl., ¶ 7.)

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 terms of the proposed repayment schedule would cause her financial hardship.

Petitioner states that she did not owe the full amount alleged by the Secretary. Petitioner claims more specifically: “Improper Default, Improper Sale, Improper Deficiency Judgment,

Improper Debt Collection, Inadequate Records, Statute of Limitations has run, Incorrect Spouse.” (Petitioner’s Request for Hearing, dated November 16, 2010). To date, Petitioner has failed to provide the necessary documentation in support of her claim.

The Secretary argues, on the other hand, that the Petitioner’s debt became due when the first mortgage was paid in full. As support, the Secretary submitted a copy of the Retail Installment Contract and Security Agreement (“Note”) bearing Petitioner’s signature, in which Petitioner accepted and agreed to the terms and covenants of the Retail Installment Contract and Security Agreement. (Sec’y Stat., Attach Note, p.1; Dillon Decl., ¶ 3.) The terms of the agreement provide that if Petitioner defaults, the lender “can do whatever is necessary to correct my default. If you spend money to correct my default, I will pay you back immediately with interest at the highest legal rate.” (Sec’y. Stat., Attach Note, ¶ 9(b).) Due to Petitioner’s failure to produce documentary evidence in support of her claim, and consistent with the terms and conditions of the Note regarding default, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

Petitioner also argues that the collection of the alleged debt is barred by the statute of limitations. The Office of Appeals, in Angela Cortez, HUDOA No. 09-M-CH-AWG102, has already recognized that while 31 U.S.C. [§] 3716(e)(1) previously contained a ten-year statute of limitations, the statute was amended in 2008 to eliminate the limitations period. Additionally, the Supreme Court has held that no statute of limitations exists in administrative proceedings. B.P. America Prod. Co. v. Burton[,] 127 S. Ct. 638 (2006).

While the Petitioner was ordered on three occasions to file documentary evidence that will prove that the alleged debt is either unenforceable or not past due, Petitioner failed to comply with any of the Orders issued by this Office. (Notice of Docketing, dated November 24, 2010; Order, dated February 2, 2011, and Order to Show Cause, dated March 4, 2011.) 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.” *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, without any documentary evidence from Petitioner to refute or rebut the Secretary’s claim and supporting documentation, I find that Petitioner’s claim challenging the amount of the alleged debt must fail for lack of proof.

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 failed to comply with any of the Orders issued by this Office, I find that Petitioner’s non-compliance to the Orders issued by this Office 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, I find that the debt that is the subject of this proceeding is enforceable against Petitioner in the amount alleged 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 at 15% of Petitioner's disposable pay.



Vanessa L. Hall
Administrative Judge

April 26, 2011