



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

In the Matter of:

Sharon M. Fletcher,
Petitioner

HUDOA No. 11-H-NY-AWG122
Claim No. 5518896 LL 9244

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Pro se

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For the Secretary

DECISION AND ORDER

On July 29, 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 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 HUD 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 4, 2011, 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 ("Notice of Docketing"), dated August 4, 2011.)

Background

On November 2, 1992, Petitioner executed and delivered to NC Mobile Home Corp. a Retail Installment Contract (“Note”) in the amount of \$21,479.25, 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.”), ¶ 2, filed August 26, 2011; Ex. A, Note.) The Note was contemporaneously assigned by NC Mobile Home Corp. to Logan-Laws Financial Corporation (“Logan-Laws”). Logan-Laws was defaulted as an issuer of Mortgage Backed Securities (“MBS”) due to its failure to comply with the Government National Mortgage Association’s (“GNMA”) MBS program requirements. (Sec’y Stat., ¶ 4, Ex. B, Declaration of Paul St. Laurent III, Acting Director, Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association, (“St. Laurent Decl.”), ¶ 4, dated August 23, 2011.) As GNMA is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (*Id.* at ¶ 5).

The Secretary has made efforts to collect this alleged debt from Petitioner, but has been unsuccessful. The Secretary therefore asserts that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$7,279.51 as the unpaid principal balance;
- (b) \$0 as the unpaid interest on the principal balance at 12.5% per annum through August 23, 2011; and
- (c) interest on said principal balance from August 24, 2011, until paid.

(Sec’y Stat., ¶ 7, St. Laurent Decl., ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated June 24, 2011, was sent to Petitioner. (Sec’y Stat., ¶ 9; St. Laurent Decl., ¶ 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 under terms agreeable to HUD. To date, Petitioner has not entered into a written repayment agreement. (*Id.*)

The Secretary’s proposed repayment schedule is 10% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 12, St. Laurent Decl., ¶ 9.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that no debt exists, that the amount of the debt is incorrect, or that the terms of the repayment schedule would create a financial hardship. Petitioner here does not contest the existence of the debt claimed by the Secretary. (Petitioner’s Hearing Request (“Pet’r’s Hr’g. Req.”), p. 1, filed July 29, 2011.) Rather, Petitioner disputes the terms of the proposed garnishment by asserting that: (1) a co-signer of the Note has already entered into a repayment agreement with HUD to repay the Note; and, (2) a garnishment in any amount will create an adverse financial circumstance for Petitioner¹.

¹ Petitioner also states that she filed for bankruptcy in 2006, but she does not claim that the bankruptcy discharged the alleged debt at issue in this case. (Pet’r’s Hr’g Req., p. 3.)

First, Petitioner asserts that “[T]he primary account holder, James E. Fletcher, is currently on a payment plan with you.” (*Id.*) Petitioner has not produced any additional evidence in support of her allegation.

The Secretary, however, has submitted a copy of the Note bearing Petitioner’s signature in which it states that “[B]uyer or Buyers, jointly and severally purchase ...” the mobile home. This Office has consistently maintained that co-signers of a loan are jointly and severally liable to the obligation, and as a result, “a creditor may sue the parties to such obligation separately or together.” *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). As such, “the Secretary may proceed against any co-signer for the full amount of the debt.” *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004); *Charlene Givens*, HUDOA No. 09-M-NY-AWG46 (June 25, 2009) (“It is well-established law that where several parties are co-signers of a ... note, the creditor may proceed against any co-signer for repayment of the full amount of the debt.”).

In order to not be held liable for the subject debt, Petitioner must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

In the instant case, Petitioner has failed to produce evidence of a written release from her obligation to pay the alleged debt or evidence of valuable consideration paid to HUD in satisfaction of the debt that would support that the unenforceability of the alleged debt. I find therefore that Petitioner has failed to prove that the debt is not legally enforceable against her. As such, Petitioner remains legally obligated to pay the subject debt as a co-signer on the Note.

Petitioner next asserts that she is “not financially able” to absorb a garnishment in any amount.” (Pet’r’s Hr’g Req., p. 1; Petitioner’s Documentary Evidence (“Pet’r’s Docs.”), p. 1, filed September 22, 2011.) The Secretary has requested a garnishment of 10% of Petitioner’s disposable income. (Sec’y Stat., ¶ 12; St. Laurent Decl., ¶ 9.) Disposable income is defined as “that part of the debtor’s compensation from an employer remaining 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).

Petitioner has provided substantial documentation in support of her argument, including a Consumer Debtor Financial Statement, a pay summary, home loan and utility receipts, credit card payment history, bank statements, and carbon copies of checks. Based on Petitioner’s pay statement, Petitioner earns \$3,160 in gross monthly salary, as well as \$2,645 in additional

monthly compensation², for a total gross monthly income of \$5,805. (Pet'r's Docs., p. 6-7.) This income is deducted by the following: federal income tax, \$1,058.06; state income tax, \$385.00; FICA, \$243.81; and Medicare, \$84.19. (Pet'r's Docs., p. 7.) Petitioner's net disposable income after these deductions amounts to \$4,033.94. A 10% garnishment, as requested by the Secretary, would equal \$403.39, leaving Petitioner with a disposable net income totaling \$3,630.55 per month.

Petitioner has provided credible documentary evidence showing monthly expenses in the following amounts: mortgage, \$1,365; a car payment, \$597.94; natural gas, \$200; clothing, \$200; home telephone, \$106.31; trash, \$60; and life insurance, \$18.49. In addition, while Petitioner claims that she paid between \$300 and \$400 per month in electricity, the electricity bill presented by Petitioner as evidence only shows a monthly charge of \$186.92. (Pet'r's Hr'g Req.; Consumer Debtor Financial Statement, p. 2.) Based upon the evidence presented, the amount that will be credited for Petitioner's monthly electricity bill will be \$186.92.

Petitioner, who lives alone, also claims \$600 to \$700 as food costs, stating that she is a diabetic and has special diet needs. (*Id.*) Petitioner has not included evidence to substantiate these costs, and so the Court will credit Petitioner for only \$600.00, at the low end of the estimated food cost.

The monthly expenses claimed by Petitioner for \$70 for DirecTV and \$500 for gasoline and auto repair will not be credited, as the Court does not consider these expenses to as essential living expenses. Petitioner also claims "\$800 or more" per month for out-of-pocket medical costs, and supports this assertion by providing a summary of medical services showing a current account balance of \$94,547.65. (Pet'r's Hr'g Req., p. 7; Pet'r's Docs., p. 13.) The summary, however, specifically states that it is not a bill, and Petitioner's evidence shows only payments of \$50 per month to the Raleigh Orthopaedic Clinic, along with a statement that she also incurs other expenses. (Pet'r's Docs., p. 20.) Without evidence to substantiate these additional medical expenses, the Court will only credit \$50 as monthly out-of-pocket medical expenses.

Petitioner, therefore, has monthly essential living expenses of \$3,384.66. After deducting these expenses and the Secretary's proposed 10% garnishment from Petitioner's net disposable income, Petitioner would be left with \$245.89 per month to cover miscellaneous expenses that would be incurred on a monthly basis.

Upon further review of the evidence presented by Petitioner, this Court also finds that while Petitioner is legally obligated to pay the alleged debt, she has met her burden of proving, by a preponderance of the evidence, that a 10% garnishment will create a substantial financial hardship for her.

Pursuant to 31 C.F.R. § 285.11(j), the Secretary "may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been

² Petitioner's pay summary does not explain these additional funds, and Petitioner does not include them in her Consumer Debtor Financial Statement. However, the payments appear consistently on the pay summary, appear to be taxed as income, and show little fluctuation from month to month. The Court therefore is aware of no reason why these payments should not be included in Petitioner's income.

reemployed continuously for at least 12 months.” The record shows that Petitioner has been involuntarily terminated from her employment. Petitioner submitted, as documentary evidence, a letter from her former employer, Tri-Arc Food Systems, Inc., in which it stated that Tri-Arc was terminating her employment as of August 8, 2011, citing “excessive absenteeism” related to Petitioner’s ongoing health problems. (Pet’r’s Docs., p. 2.) Petitioner also submitted a letter from her orthopedist that further substantiated that Petitioner’s health-related issues corresponded with charges of absenteeism in the termination letter. (*Id.* at p. 3.) The orthopedist stated in the letter that Petitioner underwent three surgical procedures between July 28, 2011, and August 11, 2011, and “remains out of work with no target return to work date able to be set at this time.” (*Id.*) The letters presented by Petitioner provide sufficient evidence to support that 1) Petitioner’s employment was terminated involuntarily; and, 2) 31 C.F.R. § 285.11(j) would be applicable in this case.

Consequently, consistent with the provisions of 31 C.F.R. § 285.11(j), the Secretary is prohibited from collecting the debt at this time until such time as Petitioner has been reemployed continuously for at least 12 months.

ORDER

For the reasons set forth above, I find that collection of the alleged debt by means of administrative wage garnishment would constitute a financial hardship for Petitioner at this time.

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment shall remain indefinitely. Therefore, it is hereby

ORDERED that the Secretary shall not refer this matter to the U.S. Department of the Treasury for administrative wage garnishment due to Petitioner’s current unemployment status.

However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment if, in the future, Petitioner becomes re-employed continuously for a period of 12 months.



Vanessa L. Hall
Administrative Judge

January 13, 2012