



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

In the Matter of:

SHAWNA PENA,

Petitioner.

HUDOA No. 11-M-CH-AWG102

Claim No. 721006334OB

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Pro se

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DECISION AND ORDER

On May 31, 2011, this Office received Petitioner's request for a hearing concerning the proposed administrative wage garnishment of her income relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary"). 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 adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. 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 any proposed 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 June 7, 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”), 2.)

Background

On January 2, 2007, Shawna Pena (“Petitioner”), executed and delivered to the Secretary a Partial Claims Promissory Note (“Note”) and Security Instrument to secure a partial claim paid on her behalf by the Secretary to pay the arrearages on her primary FHA-insured mortgage and avoid the foreclosure of her home. (Sec’y Stat., ¶ 1; Exhibit 1, Note.) The original amount to be repaid under the Note was \$4,399.52. (Sec’y Stat., ¶ 2; Note, ¶ 1.)

By the terms and conditions of the Note, the Note becomes due and payable when any of the following events occur: the original FHA mortgage matures; when the borrower pays the primary Note in full; when the maturity date of the primary Note has been accelerated; when the Note or related security instrument is no longer insured by the Secretary; or when the property is no longer occupied by the purchaser as his or her principal residence. (Note, at ¶ 3(A).) On or around September 23, 2008, the FHA mortgage insurance on the original Note and Security Instrument was terminated as the mortgagee indicated the mortgage was paid in full. (Sec’y Stat., ¶ 3; Declaration of Garry Sautter, Acting Director, Asset Recovery Division, Financial Operations Center for HUD (“Sautter Decl.”), ¶ 4.) The Secretary alleges, therefore, that pursuant to the terms and conditions of the Note the debt is now past due and legally enforceable. (Sec’y Stat. ¶ 4.)

The Secretary alleges Petitioner is currently in default on the Note and is justly indebted to the Secretary in the following amounts:

- (a) \$4,091.98 as the unpaid principal balance as of May 31, 2011;
- (b) \$0.00 as the unpaid interest on the principal balance at 3% per annum through May 31, 2011; and
- (c) interest on said principal balance from June 1, 2011, at 3% per annum until paid.

(Sautter Decl., ¶ 5.)

HUD has attempted to collect the amounts alleged to be due under the Note and alleges that Petitioner remains delinquent. (Sec’y Stat., ¶ 5; Sautter Decl. ¶ 5.) A Notice of Intent to Collect by Wage Garnishment was mailed to Petitioner on February 10, 2011. (Sec’y Stat., ¶ 7.) Petitioner was afforded the opportunity to enter into a repayment agreement but declined to do so. (*Id.* at ¶ 8.) A Wage Garnishment Order, dated March 14, 2011, was issued to Petitioner’s employer. (Sautter Decl., ¶ 8.) A total of \$674.76 has been garnished to date and is reflected in the amount owed stated above. (*Id.* at ¶ 10.)

Petitioner has not provided HUD with a copy of her pay stub. (Sec’y Stat., ¶ 11.) The Secretary, therefore, proposes a repayment schedule in the amount of \$224.82 bi-weekly or 15% of Petitioner’s disposable income. (*Id.* at ¶ 11.)

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 she does not owe the debt because, “My ex-husband got [the] house and all debt to house in divorce dated 8-8-08. When he refinanced the house he left this 2nd lean [sic] off.” (Pet’r’s Hr’g Req.)

On two separate occasions, this Office ordered Petitioner to file documentary evidence in support of her claim that she does not owe the debt in this case. (*See*, Notice of Docketing, 2; Order, dated September 1, 2011.) The most recent order requiring Petitioner to file her documentary evidence included the following language “Failure to comply with this Order may result in the imposition of sanctions in accordance with 24 C.F.R. §26.4, including the entry of judgment in favor of the opposing party, or a decision based on the documents of record.” (Order.)

As of the date of this Decision and Order, Petitioner has failed to file any evidence proving that the alleged debt in this case is unenforceable or not past due and has, therefore, failed to comply with the orders issued by this Office. This Office has held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” *Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (*citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). As Petitioner has not filed any evidence in support of his claim that she does not owe the debt, this Office finds that Petitioner’s argument fails for want of proof.¹

Accordingly, this Office finds that Petitioner has not met her burden of proof, and that the debt in this case is past due and enforceable in the amount alleged by the Secretary.

¹ This Office notes that “[w]here a property settlement or divorce decree purports to release one spouse from a joint obligation, the claims of the existing creditors against that spouse are not affected unless the creditors were parties to the action.” *In re Deborah Gage*, HUDBCA No. 86-1727-F286 (January 14, 1986). Therefore, in order to prove that Petitioner is not liable for the debt, Petitioner must have submitted 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. *In re Cynthia Ballard Rachall*, HUDOA No. 09-H-CH-AWG103 (August 6, 2009) (*citing In re William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000)).

ORDER

For the reasons set forth 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**.

It is hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount equal to \$224.82 bi-weekly or 15 percent of Petitioner's disposable pay.



H. Alexander Manuel
Administrative Judge

December 15, 2011