



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

In the Matter of:

Annie Knight,
Petitioner

HUDOA No. 11-M-NY-AWG108
Claim No. 780679897

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Pro se

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DECISION AND ORDER

On June 20, 2011, 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" or "the Department"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to utilize 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 debts by means of administrative wage garnishment. This case 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), this Office stayed the issuance of a wage withholding order on June 21, 2011, until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral (“Notice of Docketing”), dated June 21, 2011.)

Background

On April 11, 1994, Petitioner executed and delivered a Retail Installment Contract (“Note”) to Vina-Steel Sales, Inc., in the amount of \$14,987.00, 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 July 1, 2011, ¶ 2; Ex. A, Note) The Note was contemporaneously assigned from Vina-Steel Sales, Inc. to Empire Funding Corp; who, in turn, assigned the Note to U.S. Bank, N.A., a custodian/trustee ; who, in turn, assigned the Note to ASMC Servicing Ltd.; who, finally, assigned the Note to HUD on March 21, 2006. (Sec’y Stat., ¶¶ 3-6.)

Petitioner failed to make payment on the Note. (Sec’y Stat., ¶ 6; Ex. B; Declaration of Gary Sautter, Acting Director, Asset Recovery Division, HUD Financial Operations Center (“Sautter Decl.”), dated June 29, 2011, ¶ 3.) In accordance with 24 C.F.R. § 201.54, ASMC Servicing, Ltd. assigned the Note to HUD. (Sec’y Stat., ¶ 6.) HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec’y Stat. ¶ 7; Sautter Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$5,935.81 as the unpaid principal balance as of May 31, 2011;
- (b) \$0.00 as the unpaid interest on the principal balance at 2% per annum through May 31, 2011; and
- (c) interest on said principal balance from June 1, 2011 at 2% per annum until paid.

(Sec’y Stat. ¶ 7; Sautter Decl., ¶ 4.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated April 13, 2011, was mailed to Petitioner. (Sec’y Stat. ¶ 8; Sautter 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 with HUD, but Petitioner has not entered into such an agreement. (Sec’y Stat. ¶ 9; Sautter Decl., ¶ 6.) Despite attempts to obtain Petitioner’s current pay statement, Petitioner has not provided a pay statement to HUD. (Sec’y Stat. ¶ 10; Sautter Decl., ¶ 7.) The Secretary’s proposed repayment schedule is \$165.00 per month, or 15% of Petitioner’s disposable pay. (Sec’y Stat. ¶ 10; Ex. C, ¶ 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 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 by operation of law. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner disputes the existence of the debt in this case. (Petitioner’s Request for a Hearing (“Pet’r Hr’g Req.”), filed June 20, 2011.)

This Office has twice ordered Petitioner to file documentary evidence to prove that the debt in this case is not enforceable or not past due. In the Notice of Docketing, dated June 21, 2011, this Office ordered Petitioner to “file [on or before August 5, 2011] documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due.” (Notice of Docketing, p. 2.) Petitioner failed to comply with this Order.

On August 11, 2011, this Office again ordered Petitioner to “file [on or before September 7, 2011] documentary evidence to prove that all or part of the alleged debt in this case is not past due or not legally enforceable.” (Order, dated August 11, 2011.) The Order stated, “Failure to comply with this Order may result in sanctions being imposed by the Court pursuant to 24 C.F.R. § 26.4, including judgment being entered in favor of the opposing party, or a decision based on the documents in the record of this proceeding.” (emphasis in original) (*Id.*)

Petitioner again failed to file any evidence to prove that the alleged debt in this case is unenforceable or not past due. 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)). Petitioner offered no evidence to prove that she is not indebted to HUD in the amount s claimed by the Secretary. Accordingly, I find that Petitioner has not met her burden of proof.

Furthermore, this Office finds it appropriate to issue a sanction against Petitioner under 24 C.F.R. § 26.4. Section 26.4(a) states that “[t]he hearing officer may sanction a person, including any party or representative, for failing to comply with an order...; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.” 24 C.F.R. § 26.4(a) (2010). Therefore, pursuant to 24 C.F.R. § 26.4(c), which sets forth the specific sanctions that may be imposed, including “any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party...” (24 C.F.R. § 26.4(a)), I find 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.

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 to the extent authorized by law.



H. Alexander Manuel
Administrative Judge

October 13, 2011