



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

In the Matter of:

**Termekia (Collins) Thomas,**  
Petitioner.

HUDOA No. 11-M-NY-AWG38  
Claim No. 7059611 First Ben 9248

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**DECISION AND ORDER**

On December 22, 2010, 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 are designated to determine whether the Secretary may collect the alleged debt in this case 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 proving the existence and amount of debt in this case. 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 repayment schedule proposed by the Secretary are unlawful, would cause 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. § 284.11(f)(4), on December 29, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

**Background**

On April 5, 2000 Petitioner executed and delivered a Promissory Note ("Note") to First Beneficial Mortgage Corporation ("First Beneficial"), in the amount of \$46,384.00, which was insured

against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Secretary's Statement ("Sec'y Stat."), filed January 28, 2011, ¶ 2, Ex. A.) First Beneficial defaulted as an issuer of Mortgage Backed Securities ("MBS"), and the Note was subsequently assigned to the Government National Mortgage Association ("GNMA"). (Sec'y Stat., ¶¶ 3-4; Ex. B, Declaration of Christopher C. Haspel, Director, MBS Monitoring Division of the GNMA, HUD ("Haspel Decl."), dated January 26, 2011, ¶ 4.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec'y Stat., ¶ 5; Haspel Decl., ¶ 5.)

Petitioner is currently in default on the Note. (Sec'y Stat., ¶ 6.) The Secretary now claims that the debt is due and that Petitioner has failed to make payments. (*Id.*) The Secretary has made efforts to collect from Petitioner but has been unsuccessful. (*Id.*; Haspel Decl., ¶ 6.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD in the following amounts:

- (a) \$45,036.05 as the unpaid principal balance;
- (b) \$33,827.34 as the unpaid interest on the principal balance at 9.5% per annum through January 13, 2011;
- (c) interest on said principal balance from January 14, 2011 until paid; and
- (d) \$1,952.62 as administrative costs.

(Sec'y Stat., ¶ 6, Ex. C; Haspel Decl., ¶ 6.)

On or about December 2, 2010, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner. (Sec'y Stat., ¶ 7; Haspel 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 mutually agreeable terms, but has not agreed to enter into a written repayment plan in response to the Notice. (Sec'y Stat., ¶ 8; Haspel Decl., ¶ 7.) The Secretary's proposed repayment schedule is 10% of Petitioner's disposable pay. (Sec'y Stat., ¶ 13; Haspel 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, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause a financial hardship. Petitioner disputes the existence, amount and enforceability of the debt that is the subject of this proceeding. (Petitioner's Request for a Hearing ("Pet'r Hr'g Req."), filed December 22, 2010; Petitioner's Documentary Evidence ("Pet'r Evid."), filed March 10, 2011.) Specifically, Petitioner argues that the debt may not be collected because (1) the subject mobile home was surrendered prior to her filing for bankruptcy; (2) GNMA is bound by the same collection restrictions as First Beneficial; (3) the statute of limitations has run on the debt; (4) the unpaid principal balance claimed by HUD is incorrect; (5) it is grossly unfair for the interest to have run to the present with no prior notice; and (6) the administrative wage garnishment would cause a financial hardship for Petitioner. (Pet'r Hr'g Req.; Pet'r Evid.)

First, Petitioner argues that "[t]he mobile home was surrendered prior to her filing bankruptcy and it is her understanding that it was surrendered in satisfaction of any debt." (Pet'r Hr'g Req.) Petitioner filed for chapter 13 bankruptcy and entered into a Notice of Plan Modification After Confirmation, dated October 2, 2009. (Sec'y Stat., ¶ 10, Ex. D; Haspel Decl., ¶ 9.) Under this Plan, Petitioner was expected to surrender the subject mobile home. (*Id.*) However Petitioner's loan file obtained from First Beneficial contains no evidence of this surrender. (*Id.*) Petitioner also failed to make payments under the Plan, resulting in a dismissal of her bankruptcy action. (Sec'y Stat., ¶ 11, Ex. E.)

Therefore, there was no resolution regarding the subject debt as part of Petitioner's bankruptcy action. (*Id.*)

Second, Petitioner claims that the debt is unenforceable because "GNMA simply stepped into the shoes of First Beneficial because of the fraud committed[,] and its involvement at that time was not to enforce its right of guaranty of the debt but rather to collect the debt of First Beneficial." (Pet'r Evid, p.3, ¶ 1.) Therefore, Petitioner continues, "GNMA should be bound by the same collection restrictions that First Beneficial would have been bound by and as a result, First Beneficial would have been afforded no garnishment rights in South Carolina." (*Id.*)

Upon default by First Beneficial, however, all of its rights, title and interest in Petitioner's loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between First Beneficial and GNMA. (Sec'y Stat., ¶ 4; Haspel Decl., ¶ 4.) As GNMA (a division of HUD) is the rightful holder of the Note, HUD is entitled to pursue repayment from Petitioner. (Sec'y Stat., ¶ 5; Haspel Decl., ¶ 5.) Moreover, HUD is fully authorized under applicable federal codes and regulations to collect debts owed to it by the use of administrative wage garnishment. 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. Section 3720D specifically provides as follows:

Notwithstanding any provision of State law, the head of an executive, judicial, or legislative agency that administers a program that gives rise to a delinquent nontax debt owed to the United States by an individual may in accordance with this section garnish the disposable pay of the individual to collect the amount owed, if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual.

31 U.S.C. § 3720D(a).

Third, Petitioner argues that the statute of limitations has run on the alleged debt. Petitioner states, "Neither First Beneficial nor GNMA...ever commenced any collection action...and accordingly, the statute of limitation has run[,] which in South Carolina is three years since First Beneficial did not secure its debt by a real estate mortgage[,] which would otherwise [make] the statute of limitation twenty years." (Pet'r Evid., p.3, ¶ 2)

This Office previously held that an "alleged delay in pursuing HUD's claim does not prevent the Secretary from enforcing the terms of the Note." *Lora Foley*, HUDOA No. 09-M-AWG20 (March 23, 2009) (*citing David Olojo*, HUDOA No. 07-H-CH-AWG19 (October 4, 2007) ("It is well-established, however, that the United States is not generally subject to the defense of laches")). Furthermore, the U.S. Supreme Court held, in *BP America Prod. Co. v. Burton*, 127 S. Ct. 638,643 (2006), that no statute of limitations bars agency enforcement actions by means of administrative wage garnishment. *See also Douglas Hansen*, HUDBCA No. 06-A-CH-AWG03 at 3 (February 13, 2007) ("There is no time impediment to HUD's attempt to collect Petitioner's debt by means of administrative wage garnishment"). Therefore, I find that no statute of limitations applies to this action.

Fourth, Petitioner argues that the amount of the alleged debt is incorrect. Petitioner states, "The unpaid principal balance claimed by HUD in the amount of \$45,036.05...does not give Petitioner credit for what the mobile home sold for upon its repossession and sale." (Pet'r Evid., p.3, ¶ 3.) For Petitioner not to be held liable for the full amount of the debt, there must be either a release in writing from the lender specifically discharging Petitioner's obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release. *Cecil F. and Lucille Overby*, HUDBCA No.

87-1917-G250 (December 22, 1986); *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986). Petitioner has not provided this Office with any release from liability.

Petitioner's claim also fails for lack of proof. This Office has previously held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or unenforceable." *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, in the absence of documentary evidence to support Petitioner's assertion that she does not owe the full amount of the alleged debt, I find that Petitioner's claim fails for lack of proof.

Fifth, Petitioner argues that "[i]t is grossly unfair under these circumstances for the interest clock to have continuously run to the present, allegedly imputing interest due and owing by Petitioner in the amount of \$33,827.34 when Petitioner had no prior notice of what had taken place." (Pet'r Evid., p.3, ¶ 4.) Petitioner signed the Note that is the subject of this proceeding, which states that she "promises to pay ... interest on any remaining balance of principal at ... 9.50% ... per annum payable annually, commencing May 5<sup>th</sup>, 2000, and thereafter on the 5<sup>th</sup> day of [e]ach [m]onth, until the entire indebtedness has been paid," and that "[a]ny interest not so paid ... shall accrue and be payable in full at the date of maturity ...." (Sec'y Stat., Ex. A.) Petitioner's signature on the Note indicates that she agreed to be bound by the terms of the Note, including the rate and the accrual of the interest, and thus has an obligation to repay the alleged debt according to the terms of the Note.

Moreover, Petitioner has received proper notice of HUD's intent to collect the alleged debt by means of administrative wage garnishment. Pursuant to 31 C.F.R. § 285.11(e), a federal agency seeking administrative wage garnishment "shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of" the nature and amount of the alleged debt, the agency's intent to collect the same by means of administrative wage garnishment, and an explanation of the alleged debtor's rights "at least 30 days before the initiation of garnishment proceedings." By mailing a Notice of Intent to Initiate Administrative Wage Garnishment Dating dated December 2, 2010 (Sec'y Stat., ¶ 7.), the Secretary has satisfied the requirements of 31 C.F.R. § 285.11(e). Petitioner, on the other hand, has filed no documentary evidence to support her assertion that she had no notice of the assignment of the Note to HUD. "Assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due or enforceable." *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, Petitioner's assertion that she had no proper notice must fail for want of proof.

Finally, Petitioner argues that the alleged debt to HUD is unenforceable because the administrative wage garnishment would result in a financial hardship for Petitioner. Petitioner states that she "is separated from her husband and has three children to raise," "has a job making \$14.11 an hour, and is only working 30 hours a week," and "also has a monthly installment to the IRS for an error made by her accountant in filing her tax return in which IRS is recouping \$80 per month on a balance of \$2,346.29." (Pet'r Evid., p. 4.) In support of her financial hardship claim, Petitioner filed financial statements that included copies of Petitioner's bills and payments, receipts and weekly pay statements. In sum, Petitioner states, "There is simply no way that I can afford this monthly payment to pay the \$105,060.81 requested by HUD." (*Id.* at p.5.)

According to her eight weekly pay statements for the pay periods ending November 14, 2010, December 12, 2010, December 19, 2010, December 26, 2010, January 9, 2011, January 16, 2011, February 6, 2011, and February 26, 2011, Petitioner's average weekly gross pay was \$516.26 and her average monthly gross pay was \$2,065.05. (Pet'r Evid.) The Secretary is authorized to garnish "up to 15% of the debtor's disposable pay," which is determined "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), (i)(2)(i)(A). After subtracting

allowable deductions for federal tax, \$39.35; state tax, \$63.74; Social Security, \$88.97; Medicare, \$26.67; and health insurance, \$260.63, Petitioner is left with a disposable income of \$396.43 weekly or \$1,585.71 monthly for the purposes of wage garnishment. (Pet'r Evid.)

The documentary evidence submitted by Petitioner shows records of payment for the following essential household expenses for which this office will credit Petitioner: rent, \$390.00; electricity, \$66.04; gas, \$85.82; car insurance; \$211.71; automobile loan payment, \$280.00; and telephone, \$26.55. Petitioner also submitted medical bills totaling \$1,277.09. Since Petitioner has not submitted sufficient documentary evidence to establish the medical bills should be treated as a recurring monthly expense, a monthly average of \$102.42 will be credited towards Petitioner's essential expenses.

Petitioner failed to file documentary evidence to support her claimed expenses of food, \$600.00; children's clothing, \$60.00; laundry and dry cleaning, \$80.00, and IRS repayment, \$80. This Office, however, has determined that credit may be given for certain essential household expenses, such as rent and food, where Petitioner has not provided bills or other documentation, yet the "financial information submitted by Petitioner...[was found to be] generally credible..." *David Herring*, HUDOA No. 07-H-NY-AWG53 (July 28, 2008) (citing *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). On the other hand, certain expenses are not deemed by this Office to be necessary living expenses and thus require documentary evidence to support these claims. *Brenda Husband*, HUDOA No. 07-L-CH-AWG31 (February 14, 2008). In accordance with the holdings in *Herring* and *Loera*, Petitioner's alleged monthly expenses for food, \$600, and other reasonable expenses related to the care of her children and repayment of IRS debt, totaling \$220, will be credited towards her essential monthly household expenses.

The following monthly expense is not included as part of Petitioner's essential household expenses because Petitioner has not submitted sufficient documentary evidence to establish it is an essential household expense: \$89.02 for West Carolina Communications Digital Entertainment (cable). Thus, Petitioner's essential household expenses total \$1,982.54 monthly.

Petitioner also indicated she received \$545.52 per month in child support. She has not shown with specificity which portions of her expenses are attributed to the cost of supporting her children. Therefore, this Office deems it reasonable to offset the full amount of the child support payments against her monthly essential household expenses. Accordingly, I find that Petitioner's monthly essential household expenses of \$1,982.54, less child support of \$545.52, total \$1,437.02.

Petitioner's monthly disposable income of \$1,585.71 less her monthly essential household expenses of \$1,437.02 leaves Petitioner with a balance of \$148.69. A 10% garnishment rate of Petitioner's disposable income, as proposed by the Secretary (Sec'y Stat., ¶ 13; Haspel Decl., ¶ 10), would equal \$158.57 per month and leave Petitioner with a negative balance of \$-9.98. Therefore, I find that the Secretary's proposed repayment schedule would create a financial hardship for Petitioner.

Pursuant to 31 C.F.R. § 285.11(k)(3), this Office has the authority to order garnishment at a lesser rate based upon the record before it, particularly in cases where financial hardship is found. Upon consideration, I find that Petitioner has submitted sufficient documentary evidence to substantiate her claim that the administrative wage garnishment of her disposable income, in the amount sought by the Secretary, would cause a financial hardship. In conclusion, for the reasons stated herein, I find that Petitioner has not met her burden of proof that no debt exists, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful. Therefore, I find that the debt in this case is past due and enforceable in the amount alleged by the Secretary.

Petitioner may seek to negotiate repayment terms with HUD, as this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Petitioner may discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

**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 shall remain in place **INDEFINITELY**. Therefore, it is hereby

**ORDERED** that the Secretary is not authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at this time. However, the Secretary may renew this garnishment action at such time as the Secretary determines Petitioner's financial circumstances warrant such action. Petitioner is **ORDERED** to respond promptly to and to cooperate fully with future efforts by the Secretary to determine Petitioner's financial status.



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H. Alexander Manuel  
Administrative Judge

April 21, 2011