



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

In the Matter of:

Sandi Schlup-Odorizzi,
Petitioner

HUDOA No. 10-H-CH-AWG121
Claim No. 721006216

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For the Secretary

DECISION AND ORDER

On August 26, 2010, Petitioner made a request for a hearing concerning a proposed repayment schedule incident to a wage garnishment order sought by the Secretary relating to a debt owed to the U.S. Department of Housing and Urban Development ("HUD") that Petitioner claims does not exist. 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 Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b).

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. (See 24 C.F.R. § 17.170(b).) 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 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. (Id.) As a result, pursuant to 31 C.F.R. § 285.11(f) (4) this Office, on September 16, 2010, 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 September 16, 2010.)

Background

Petitioner executed and delivered a Partial Claims Promissory Note (“Note”) to secure a partial claim paid on her behalf by the Secretary to pay the arrearages on her primary FHA-insured mortgage and avoid foreclosure of her primary residence. (Secretary’s Statement (“Sec’y Stat.”), filed October 1, 2010, ¶ 1; Ex. A ¶ 1; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated October 21, 2009, ¶ 1, ¶ 3.) The amount borrowed under the Note was \$3,190.97. (Sec’y Stat., ¶ 2, Ex. 1, and Ex. 2). Payment was due and payable when the borrower paid the primary Note in full, when the maturity date of the primary Note was accelerated, when the Note or related security instrument was no longer insured by the Secretary or when the property was no longer occupied by the purchaser as her principal residence. (Id., Ex. 1, Note, ¶ 3. I, II, III, and IV).

On or about August 29, 2008, the FHA mortgage insurance on the first mortgage was terminated as the lender indicated the mortgage was paid in full. Therefore, pursuant to the terms and conditions of the Note, payment is due in full. (Id., ¶ 4, Ex. 2; Dillon Decl., ¶ 4).

HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec’y Stat., ¶ 5; Ex. 2, Dillon Decl. ¶ 5.) The Petitioner remains indebted to HUD in the following amounts:

- (a) \$2,844.30 as the unpaid principal balance as of September 13, 2010;
- (b) no unpaid interest on the principal balance is currently due; and
- (c) interest on the unpaid balance is set at 3% per annum until the Note is satisfied.

(Sec’y Stat., ¶ 6; Ex. D, Dillon Decl., ¶ 5 (a) (b) (c).) On July 13, 2010, a Notice of Intent to Initiate Administrative Wage Garnishment was mailed to Petitioner. (Sec’y Stat., ¶ 7; Ex. 2, Dillon Decl., ¶ 6.) Petitioner was afforded an opportunity to enter into a written repayment agreement but failed to enter such an agreement. (Sec’y Stat., ¶ 8; Ex. 2, Dillon Decl., ¶ 7.)

A wage garnishment order was issued to Petitioner’s employer on August 16, 2010. (Id., Ex. 2; Dillon Decl. ¶ 8.) In response to wage garnishment order, the Department of Treasury has received four garnishment payments totaling \$874.66 of which two payments totaling \$437.33

have been forwarded to HUD and are reflected in the outstanding balance described by the Secretary. (Id., Ex. 2; Dillon Decl., ¶¶ 8-9).

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 argues that the debt does not exist because: 1) the house was sold as part of her divorce from her spouse, 2) the terms of repayment would cause financial hardship, and 3) she was unaware of the existence of the debt.

Petitioner first claims that she does not owe the debt because “Our home was sold after my divorce from Samuel Schlup 4 years ago.” (Petitioner’s Hearing Request (“Pet’r. Hr’g. Req.”), filed September 10, 2010.) Beyond Petitioner’s allegation that she no longer owes the alleged debt due to a divorce, there is no record that reflects sufficient evidence to support her position. This Office has previously held that co-signers of a loan are jointly and severally liable to the [loan] 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” because each co-signer is jointly and severally liable for the obligation. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Additionally, the Secretary’s right to collect the alleged debt in this case emanates from the terms of the Note. *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007).

For Petitioner not to be held liable for the subject debt she 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, thus rendering the alleged debt unenforceable. While the Petitioner may be divorced from her ex-spouse, neither the Secretary nor the lender was a party to the divorce action. So as a recourse, Petitioner may seek to enforce, in the state or local court, the divorce decree that was granted against her ex-husband so that Petitioner may recover from her ex-spouse monies paid to HUD by her in order to satisfy this legal obligation. See *Michael York*, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3. I find, therefore, without proof of a

written release, Petitioner remains legally obligated to pay the subject debt as a co-signor on the Note.

Second, Petitioner states “I have 5 children and 4 are in college. I cannot afford to have my wages garnished at this time...” Petitioner failed, however, to submit sufficient evidence to show the extent of her financial hardship. On three occasions this Office ordered Petitioner to file documentary evidence to prove “that the proposed garnishment amount would create a financial hardship.” (Notice of Docketing, dated September 16, 2010; Order, dated October 5, 2010; Order to Show Cause, dated October 28, 2010.) To date, Petitioner has failed to comply with any of the Orders issued by this Office. This Office has held that 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). Thus, I find that Petitioner’s claim of financial hardship fails for lack of proof.

Third, Petitioner further asserts that the debt does not exist. Petitioner claims, “I have no idea what this debt is or why it is owed.” (Id.) Petitioner also states “At this time I neither am unaware of any existing debt, nor have I received any notification from Colonial Savings, Mortgage Company concerning this matter.” (Pet’r Hrg. Req.) Further, Petitioner’s statement is inconsistent as it seems to suggest that Petitioner was aware of the existing debt for which she claimed she had no notice. While Petitioner claims that she “has no idea what this debt is or why it is owed,” the record supports otherwise, due to Petitioner’s failure to submit evidence in support of this claim.

The Secretary contends, on the other hand, that “Several attempts were made to obtain Petitioner’s current pay stub.” As of September 29, 2010, Petitioner has not provided HUD with a current pay stub. (Sec’y Stat., ¶ 11, Ex. 2; Dillon Decl., ¶ 10.) Further, “Petitioner has provided no evidence that the Partial Claim in the amount of \$3,190.97 was paid.” (Sec’y Stat., ¶¶ 12-13, Ex. 2; Dillon Decl., ¶¶ 10-11.) Upon reviewing the record, Petitioner was issued a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated July 13, 2010 to which Petitioner responded by submitting a request for hearing. (Id.) In her Request for Hearing, and by Petitioner’s own admission, she agreed that: “I have *read and understand* the Important *Notice About Administrative Wage Garnishment*.” (emphasis added) (Pet’r. Hrg. Req.) Without evidence to rebut or refute the evidence presented by the Secretary, I find Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

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 also 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

For the reasons set forth above, I find the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed 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 income.



Vanessa L. Hall
Administrative Judge

February 8, 2010