



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

In the Matter of:

**Jeri J. Tola,**

Petitioner

HUDOA No. 10-H-NY-AWG08  
 Claim No. 780104136-0B

Jeri J. Tola  
 15163 Owens Drive  
 King George, VA 22485

Pro se

Julia Murray, Esq.  
 U.S. Department of Housing and  
 Urban Development  
 Office of Assistant General Counsel  
 For New York/New Jersey Field Offices  
 26 Federal Plaza, Room 3237  
 New York, NY 10278-0068

For the Secretary

**DECISION AND ORDER**

On October 8, 2009, 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” or “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 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 are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if contested by a debtor. 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.* Pursuant to 31 C.F.R. § 285.11(f)(4), on October 20, 2009, 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 October 20, 2009.)

### **Background**

On February 1, 1993, the Petitioner (a/k/a “Jeri J. Gain) executed and delivered a Note (“Note”) to American Eagle Builders in the amount of \$12,700.00 which was insured against non payment by the Secretary, pursuant Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (Sec’y Stat.’), filed October 27, 2009, ¶ 2, Exh. A.) Contemporaneously, the Note was assigned by American Eagle Builders to American Savings Mortgage Corporation. (Sec’y Stat., ¶ 3.) The Note was subsequently assigned to ASMC Acceptance Corp and then to Amerus Bank. (Sec’y Stat., ¶¶4-5; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated October 26, 2009, ¶ 3.) This Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12. U.S.C. § 703. (Sec’y Stat., ¶ 2.)

Petitioner failed to make payments in accordance with the payment obligations outlined within the Note, and as a result, the Note was assigned to HUD. (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 3.) HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec’y Stat., ¶ 8; Dillon Decl., ¶ 4.) The Secretary has filed a statement in support of his position that Petitioner is indebted to HUD in the following amounts:

- (a) \$7,835.19 as the unpaid principal balance as of September 30, 2009;
- (b) \$956.33 as the unpaid interest on the principal balance at 5% per annum through September 30, 2009; and
- (c) interest on said principal balance from October 1, 2009 at 5% per annum until paid.

(Sec’y Stat., ¶ 8; Dillon Decl., ¶ 4.)

On September 18, 2009 a Notice of Intent to Initiate Wage Garnishment was sent to Petitioner. (Sec’y Stat., ¶ 9; Dillon Decl., ¶ 5.) Petitioner was afforded an opportunity to enter into a written repayment agreement under terms agreeable to HUD pursuant to 31 C.F.R. 285.11(e)(2)(ii). (Sec’y Stat., ¶10; Dillon Decl., ¶6.) Petitioner did not enter into a written repayment agreement with HUD. (*Id.*) A Wage Garnishment Order was sent to Petitioner’s employer on October 19, 2009. (Sec’y Stat., ¶ 11; Dillon Decl., ¶ 7.)

Petitioner has not provided HUD with a copy of her most recent pay stub. (Sec’y Stat., ¶ 12; Dillon Decl., ¶ 8.) The Secretary’s proposed repayment schedule is 15% of Petitioner’s disposable income. (Sec’y Stat., ¶ 13; Dillon Decl., ¶ 8.)

### **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 claims that she does not owe the debt because it does not exist and states, "According to the divorce documents from 7 April 1997 between Jeri Jean Gain John M. Gain, John M. Gain is responsible for all debt on the penalty for which debt is incurred." (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed, October 8, 2009.)

Petitioner's argument that her husband, rather than herself, is legally obligated under the Note based on the language contained within the Divorce Decree is unavailing. Beyond a mere allegation that the alleged debt is precluded by the terms of her existing Divorce Decree, Petitioner has not submitted additional documentary evidence that substantiates her claim that the debt does not exist. Petitioner was ordered to submit additional documentation that would otherwise prove that the subject debt did not exist, or that she was released from her obligation. (Order to Show Cause, dated December 2, 2009.) To date, Petitioner has failed to provide, beyond a copy of her Divorce Decree, sufficient documentary evidence that would otherwise prove that HUD, as a creditor, was a party to the divorce proceeding, and further prove that Petitioner was released from her joint obligation to pay the alleged debt. However, the Secretary has filed his Statement and supporting documentation that support his position that Petitioner remains legally obligated to pay this debt, and as a result has met his initial burden of proof to show the existence and amount of debt, See 31 C.F.R. § 285.11(f)(8)(i).

Furthermore, as a cosigner on the Note, Petitioner is jointly and severally liable with her former spouse for repayment of the debt. "Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together." *Dana Phillips*, HUDBCA No. 03-A-CH-AWG17, (April 29, 2003), citing *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). For Petitioner not to be held liable for the full amount of the alleged debt, Petitioner must submit evidence of a release in writing obtained from the Secretary specifically discharging Petitioner's obligation, or of valuable consideration accepted by the Secretary in connection with the alleged debt, which would indicate an intent to release. *Joseph and Jacqueline Ragimierski*, HUDOA No. 07-M-NY-HH53 (Ruling and Order on Reconsideration) (March 26, 2009), *Arlain Clay*, HUDOA No. 08-H-CH-AWG20 (September 15, 2008); *Cynthia Abernethy*, HUDBCA No. 04-D-NY-AWG39 (March 23, 2005). *See also* *Beckie Thompson*, HUDBCA No. 04-D-CH-EE015 (September 20, 2004).

In this case, the Secretary has not issued a release discharging Petitioner's obligation or indicated an intent to release Petitioner from the alleged debt. Since neither the Secretary nor the lender were parties to the divorce action, Petitioner is bound by her prior contractual obligations. Petitioner may seek to enforce the Divorce Decree against her ex-husband in a state or local court to recover monies paid to HUD by her to satisfy this obligation. But, the Secretary is not precluded from enforcing this debt against Petitioner. *Dana Phillips*, citing *Deborah Gage*, HUDBCA No. 86-1276-F283 (January 14, 1986). I find, therefore, that Petitioner remains legally obligated to pay the alleged debt as claimed by the Secretary.

As a final point, Petitioner has also failed to comply with all of the Orders issued by this Office to provide evidence that would more sufficiently prove that the subject debt is unenforceable. 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, I find that Petitioner's non-compliance to the Orders issued by this Office also provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

**ORDER**

Based on the foregoing, I find that the debt that is the subject of this proceeding exists and is enforceable in the amount alleged 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, or \$ 65.00 bi-weekly.



---

Vanessa L. Hall  
Administrative Judge

January 15, 2010