



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

In the Matter of:

Yong Mi Wright,

Petitioner

:
:
: HUDOA No. 10-H-NY-AWG30
: Claim No. 5509126B

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For the Secretary

DECISION AND ORDER

On January 13, 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 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. 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 January 14, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated January 14, 2010.)

Background

On May 27, 1992, Petitioner executed and delivered to NC Mob Hms dba Home Town USA a Retail Installment Contract (“Note”) in the amount of \$15,674.50 for the purchase of a manufactured home, 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 February 23, 2010, ¶ 2, Ex. A.) Contemporaneously, NC Mob Hms dba Home Town USA assigned the Note to Logan-Laws Financial Corporation. (Sec’y Stat., ¶ 3, Ex. A.) Subsequently, the Note was assigned to the Government National Mortgage Association (“GNMA”), a division of the Secretary. (*Id.* at ¶¶ 4-6, Ex. B, Declaration of Paul St. Laurent, III, Acting Director, Mortgage-Backed Securities Monitoring Division of GNMA (“St. Laurent Decl.”), dated February 19, 2010, ¶¶ 5-7.)

Petitioner is currently in default on the Note. (*Id.* at ¶ 8, Ex. B, St. Laurent Decl., ¶ 4.) The Secretary has made efforts to collect from Petitioner other than by administrative wage garnishment but has been unsuccessful. (*Id.*, Ex. B, St. Laurent Decl., ¶ 4.) The Secretary has filed a Statement in support of his position that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$8,673.16 as the unpaid principal balance;
- (b) \$1,830.98 as the unpaid interest on the principal balance at 13.00% per annum through October 24, 2006; and
- (c) interest on the principal balance from October 25, 2006 until paid.

(*Id.*, Ex. B, St. Laurent Decl., ¶ 4.)

On December 21, 2009, Linebarger Goggan Blair & Sampson, LLP (“Linebarger”), acting on behalf of HUD, sent a notice to Petitioner demanding either of the following: payment in full of the debt Petitioner owes HUD, a repayment plan acceptable to HUD by January 20, 2010, or a request for a hearing by January 11, 2010. (*Id.* at ¶ 9.) On January 4, 2010, Petitioner responded to Linebarger’s notice by alleging she does not owe the subject debt and requesting a hearing. (*Id.* at ¶ 10.) On January 29, 2010, GNMA sent Petitioner a letter proposing a repayment plan be submitted by February 12, 2010. (*Id.* at ¶ 11, Ex. B, St. Laurent Decl., ¶ 9.) To date, Petitioner has not proffered any repayment terms. (*Id.*, Ex. B, St. Laurent Decl., ¶ 9.) The Secretary proposes a repayment plan of 15% of Petitioner’s disposable pay. (*Id.*, Ex. B, St. Laurent Decl., ¶ 9.)

Discussion

Petitioner challenges the existence and enforceability of the alleged debt. Petitioner contends that (1) she is not liable for the alleged debt because her ex-husband is responsible for the loan; and (2) the proposed repayment plan would cause her financial hardship. 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 terms of the proposed repayment schedule would cause her financial hardship.

First, Petitioner claims that the alleged debt may only be collected from her ex-husband by stating:

My ex-husband obtained this loan while we were married. We are now divorced. He is responsible for the loan in that he received the home that was financed through his VA loan and was ordered to pay the indebtedness due on this account. I have attached a copy of the Equitable Distribution Judgment requiring that he be responsible for the loan, a copy of a Motion and Order to hold him in contempt for failure to pay the loan and a copy of the outstanding Order for his arrest for failure to pay.

(Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed January 13, 2010.)

As support of her position, Petitioner submitted a copy of her "Equitable Distribution Judgment" from the General Court of Justice of Sampson County, North Carolina, District Court Division ("Sampson County Court"), which states that "the indebtedness for the mobile home [under the Note] should be allocated to [Petitioner's ex-husband] and he should have 90 days to refinance the same or otherwise have the [Petitioner] removed from any liability whatsoever on said indebtedness," and that Petitioner "is entitle[d] to judgment against [Petitioner's husband] in the amount of \$830.00." (Petitioner's Documents ("Pet'r Docs."), filed March 16, 2010.)

However, Petitioner's divorce decree only determines the rights and liabilities between Petitioner and her ex-husband, not HUD as HUD was not a party to the divorce action. *Hedieh Rezai* (citing *Kimberly S. King (Theide)*, HUDBCA No. 89-4587-L74 (April 23, 1990)). "Petitioner may have a right of action against her former husband, based on the divorce decree, but the Secretary is not prevented from enforcing the debt against Petitioner through administrative offset." *Anna L. Kestner*, HUDBCA No. 99-D-NY-Y275 (May 23, 2000) (citing *Joy A. Forbes*, HUDBCA No. 93-C-NY-R906 (Dec. 20, 1993)). Additionally, Petitioner may seek an enforcement of the Equitable Distribution Judgment against her ex-husband in state or local court to the extent allowed to recover monies paid to HUD by Petitioner to satisfy this obligation. Otherwise the debt remains enforceable against Petitioner by collection through administrative wage garnishment.

Furthermore, Petitioner and her former husband both signed the Note at issue. (Sec'y Stat., Ex. A.) This Office has previously held that "[a]s a cosigner on the . . . note, Petitioner is jointly and severally liable for the obligation." *Hedieh Rezai* at 4. "Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together." *Id.* (citing *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314 at 3 (July 15, 1987)). This means that the Secretary is not precluded from enforcing this debt against Petitioner and, as such, may proceed against any co-signer for the full amount of the debt.

For Petitioner not to be held liable for the full amount of the debt, there must either be 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). "Where 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." *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 at 3 (May 10, 2004) (emphasis in original) (citing *Deborah Gage*, HUDBCA No. 86-1727-F286 (January 14, 1986)). Based upon the record contained in this proceeding, Petitioner has failed to submit evidence to establish the existence of a valid release, and therefore I find that Petitioner remains legally obligated for the repayment of this Note.

Second, Petitioner claims the Secretary's proposed repayment schedule will cause a financial hardship to Petitioner: "Based upon my income it would be very difficult for me to make these payments." (Pet'r Hr'g Req.) As evidence, Petitioner has submitted a copy of a financial affidavit, signed by Petitioner on January 29, 2010 and filed with the Sampson County Court, and a copy of her pay stub for the period beginning December 6, 2009 and ending December 12, 2009. (Pet'r Docs.)

According to her enclosed pay stub, Petitioner earns \$402.67 gross per week or \$1,610.68 gross per month. (Pet'r Docs.). 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) and (i)(2)(i)(A). After subtracting allowable deductions, including \$21.68 for Federal tax, \$23.15 for Federal FICA, \$5.42 for Medicare, \$16.00 for State tax, \$25.30 for medical insurance and \$2.92 for dental, Petitioner is left with \$308.20 as her weekly disposable income, or \$1,232.80 as her monthly disposable income. (Pet'r Docs.)

Petitioner provided a copy of her financial affidavit in which she listed her household expenses, for which actual bills were not submitted, as evidence of her monthly expenses. These monthly expenses included groceries and household goods, \$300; clothing, \$25; uninsured medical and dental expenses, \$45; car (gas and other

maintenance), \$300; rent/house payment, \$385; property tax, \$37.50; homeowner's or renter's insurance, \$32; household maintenance and repair, \$25; yard maintenance, \$20; electricity, \$80; heat (gas, oil, etc.), \$30; and car insurance, \$80. (Pet'r Docs.) In a previous case involving similar circumstances, this Office included expenses wherein the "Petitioners' Statement lists other monthly expenses for which bills were not submitted." *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28, at 4 (July 30, 2004). In *Loera*, the administrative judge concluded that the financial information submitted by [the] Petitioner...[was] generally credible, although the averages of monthly living expenses appear to be somewhat overstated." (*Id.*) Similarly, in this case, I find the financial affidavit to be generally credible and thus will consider allowances to pay for reasonable monthly expenses that cover necessary living expenses such as food and utilities, for example. Therefore, this Office will credit \$1404.50 towards Petitioner's monthly expenses for such essential expenses.

Petitioner also included the following expenses in her financial affidavit: personal care (includes laundry, dry cleaning, cosmetics, grooming); recreation/entertainment; donations; dues and charity; magazines; newspapers; books, etc.; gifts (birthday, wedding, anniversaries, funeral); satellite; and life insurance. This Office does not consider any of these expenses to be essential household expenses, and as a result, Petitioner will not receive credit for them. Without sufficient evidence to verify the relationship of these expenses to essential household expenses, this Office is unable to establish whether these expenses should be included towards Petitioner's monthly expenses. Thus, the total sum of monthly expenses for which Petitioner will receive credit remains at \$1404.50 per month.

A 15% garnishment rate of Petitioner's monthly disposable income as proposed by the Secretary would equal \$184.92 per month, thereby increasing Petitioner's monthly expenses from \$1,404.50 to \$1,589.42 per month. Thus, Petitioner's monthly expenses of \$1,404.50 exceed her monthly disposable income of \$1,232.80 by \$171.70. A 15% monthly garnishment rate of \$184.92 per month would leave Petitioner with a negative balance of (-\$356.62).

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 due consideration, this Office finds that the Petitioner has submitted sufficient documentary evidence regarding essential household expenses in order 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. To impose an administrative wage garnishment against the Petitioner, at any rate, would constitute a financial hardship for Petitioner.

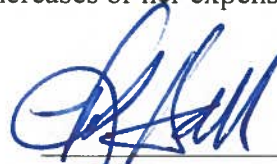
While the Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, a garnishment amount at any percentage of Petitioner's disposable income would constitute a financial hardship sufficient enough to forego collection at this time.

ORDER

Based on the foregoing, I conclude that an administrative wage garnishment would create a financial hardship for the Petitioner at this time. The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment shall remain indefinitely. Therefore, it is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment because of Petitioner's financial circumstances at this time.

However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment if, in the future, Petitioner's income increases or her expenses for necessities are reduced.



Vanessa L. Hall
Administrative Judge

July 8, 2010