



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

In the Matter of:

**Deborah Daly,**  
Petitioner

HUDOA No. 10-H-NY-AWG71  
Claim No. 5470154

Deborah Daly  
2237 Hidden Valley Circle  
Kinston, NC 28504

For Petitioner

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For the Secretary

**RULING ON MOTION TO REOPEN**

On January 16, 2009, a Decision and Order, under the name of *Deborah Daly*, HUDOA 08-H-NY-AWG64, was issued by this Court. Due to Petitioner's failure to meet her burden of proof, the Court decided that the debt was "legally enforceable against Petitioner in the amount claimed by the Secretary" and, in addition, authorized the Secretary "to seek collection of Petitioner's outstanding obligation by means of administrative wage garnishment in the amount of 10% of Petitioner's disposable income." (*Deborah Daly* at p. 3.)

But, on April 1, 2010 Petitioner filed an Administrative Wage Garnishment Hearing Resolution, along with documentary evidence that included a Hearing Request dated July 17, 2008, and copies of several letters to the United States Department of Financial Management Services dated 7/17/08, 6/13/08, 8/12/08, 8/28/08, and 10/19/09, all in which Petitioner claimed she never knew she owed a balance on the alleged debt. She further claimed that she requested information regarding the amount of the debt from the U.S. Department of Treasury, Debt Management Services, but again asserted she never received the requested information.

On April 21, 2010, this Court ordered the Secretary to "(1) report on whether a withholding order has been previously issued in a manner for clarification purposes consistent with the Decision and Order dated January 16, 2009; (2) provide the status of the withholding order previously issued; and (3) provide the balance that remains on the debt that is subject of the withholding order in this case." (Amended Notice.) Thereafter, the Secretary informed this

Office “Pursuant to, and consistent with, the Decision and Order in *Deborah Daly*, HUDOA 08-H-NY-AWG64, the U.S. Department of the Treasury, Financial Management Service, issued a Wage Garnishment Order to Petitioner’s employer.” (Secretary’s Response to Court’s Order (“Sec’y Resp.”), filed May 26, 2010, ¶ 2, Ex. A, Declaration of Paul St. Laurent, III, (“St. Laurent Decl.”), Director, Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association (“GNMA” or “Ginnie Mae”), dated May 26, 2010, ¶ 4.)

“Pursuant to the Wage Garnishment Order issued to Petitioner’s employer, HUD has received 34 garnishment payments totaling \$4,367.69. These payments have been credited to Petitioner’s debt.” (Id.) Therefore, as of May 2010, the balance due on Petitioner’s debt is \$6,721.38. (Id.) The Wage Garnishment Order dated January 16, 2009 will remain in full force and effect. (St. Laurent Decl., ¶5.) However, garnishments have been stayed in accordance with this Court’s Order dated April 21, 2010. (Sec’y Resp. at ¶ 3, Ex. A, St. Laurent Decl., ¶ 4.) On May 20, 2010, Ginnie Mae sent relevant documents pertaining to the subject debt to Petitioner, including a Case Financial History-Balance Summary to the Petitioner. (Id. at ¶5, Ex. A, St. Laurent Decl., ¶ 6.)

While this request for hearing was submitted, the same matter had already been heard, with a decision issued in favor of the Government, primarily due to Petitioner’s failure to comply with the Court’s orders to submit documentary evidence. As such the request now submitted by Petitioner is deemed to be a Motion to Reopen pursuant to 24 C.F.R. 285.11(k) based on materially changed circumstances.

Pursuant to 31 C.F.R. § 285.11(k), Petitioner may present evidence that no debt exists or that the amount of the debt is incorrect. Petitioner claims that the debt does not exist and is not enforceable in the amount claimed by the Secretary. In particular, Petitioner asserts:

I have received some documents “NOTICE OF DOCKETING, ORDER, AND SAY [sic] OF REFERRAL [sic] I am not sure what this is. I have requested several times for a list of all transactions on this account. I do not understand how you came up [with] the balance, not even sure what [is] the balance. I do not get any statements, etc.

(E-mail from Petitioner, dated April 14, 2010.)

First, Petitioner was informed in the Amended Notice of Docketing, Order, and Stay of Referral issued on April 21, 2010 that:

Documents relating to this alleged debt are not in the possession of this Office. Petitioner may request copies of these documents by writing to:

Kim McManus  
U.S. Department of Housing and Urban Development  
Financial Operations Center  
52 Corporate Circle  
Albany, NY 12203

(Amended Notice, at p. 2.)

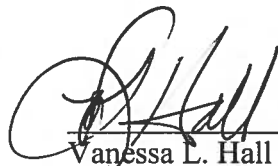
Additionally, Petitioner failed to provide the necessary documentation in support of her claim despite being ordered twice to do so. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated April 6, 2010; Order (“July Order”), dated July 14, 2010.) Petitioner was put on notice that “**[f]ailure to comply with this Order shall result in a decision based on the record of this proceeding.**” (emphasis in original) (July Order.) Consequently, the Court will proceed as noted due to Petitioner’s failure to produce evidence in support of her claim.

This Office has consistently held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable.” *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, I find Petitioner’s claim fails for lack of proof.

### **ORDER**

Based on the foregoing, this Office finds the debt that is the subject of this proceeding remains past due and 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 continue to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 10% of Petitioner’s disposable income as so previously indicated in the Decision and Order issued in this matter on January 16, 2009.

  
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Vanessa L. Hall  
Administrative Judge

November 15, 2010