



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

In the Matter of:

Robin G. Lindholm,

Petitioner

HUDOA No. 10-M-NY-AWG07
Claim No. 77-084476-60B

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Pro se

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For the Secretary

DECISION AND ORDER

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. 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, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated October 20, 2009.)

Background

On January 28, 1986, Petitioner executed and delivered to Bill Dickey Mobile Homes, a Retail Installment Contract (“Note”) in the amount of \$18,555.00, which was insured against nonpayment by the Secretary of HUD (“Secretary”), pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (“Sec’y Stat.”), filed October 28, 2009, ¶ 2; Exh. A.) On January 31, 1986, Bill Dickey Mobile Homes assigned the Note to Logan Financial Corporation, who subsequently went out of business. (Sec’y Stat., ¶¶ 3-4; Exh. B, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD (“Dillon Decl.”), dated October 27, 2009, ¶ 3.) The Note was subsequently transferred to the Government National Mortgage Association (“GNMA”) pursuant to governing regulations for the Title I insurance program. (Id.) Petitioner failed to make payments as agreed in the Note. (Sec’y Stat., ¶ 5.) Consequently, on August 22, 1995, G.E. Capital Asset Management Corporation, as Master Subservicer for GNMA, assigned the Note to the United States of America in accordance with 24 C.F.R. § 201.54. (Sec’y Stat., ¶ 5, Exh. B, Dillon Decl., ¶ 3.) The Secretary is the holder of the Note on behalf of the United States of America. (Sec’y Stat., ¶ 5; Exh. B, Dillon Decl., ¶ 3.)

The Secretary has filed a Statement in support of his position that Petitioner is currently in default and is indebted to the Secretary in the following amounts:

- (a) \$7,708.64 as the unpaid principal balance as of September 30, 2009;
- (b) \$2,922.92 as the unpaid interest on the principal balance at 5% per annum through September 30, 2009; and
- (c) Interest on said principal balance at 5% per annum from October 1, 2009 until paid.

(Sec’y Stat., ¶ 6; Exh. B, Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated September 8, 2009 was sent to Petitioner. (Sec’y Stat., ¶ 7; Exh. B, Dillon Decl., ¶ 5.) 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 terms agreeable to HUD. (Sec’y Stat., ¶ 8; Ex. B, Dillon Decl., ¶ 6.) As of October 27, 2009, Petitioner had not entered into a written repayment agreement. (Sec’y Stat., ¶ 8; Exh. B, Dillon Decl., ¶ 6.)

Petitioner provided HUD a copy of her bi-weekly pay statement for the period ending August 16, 2009. (Exh. B, Dillon Decl., ¶ 7.) The pay statement indicated Petitioner’s gross pay for the pay period totaled \$554.57 and Petitioner’s bi-weekly net disposable income totaled \$512.15. (Id.) The Secretary’s proposed repayment schedule

is 15% of Petitioner's net disposable income or \$76.82 bi-weekly. (Sec'y Stat., ¶ 9; Exh. B, Dillon Decl., ¶ 7.)

Discussion

Petitioner challenges the existence and enforceability of the debt by arguing that (1) her ex-husband is liable for the debt pursuant to a divorce decree, and (2) an administrative wage garnishment would cause financial hardship. (Petitioner's Hearing Request, ("Pet'r Hr'g Req.") filed October 8, 2009.)

First, Petitioner disputes that she owes the full amount of the debt. (Pet'r Hr'g Req.) 31 U.S.C. §§3716 and 3720A provide federal agencies with administrative wage garnishment as a means of collecting debts owed to the United States Government. The burden of proof is on the Secretary to show that the debt claimed by the Secretary is enforceable and past-due. 31 C.F.R. §285.11(f)(8)(i). The Secretary has filed his statement, along with supporting documents, and as a result the Secretary has met his initial burden of proof to show the existence and amount of the debt. Petitioner and her ex-husband both signed the Note. (Exh. A.) This Office has previously held that "the Secretary may proceed against any cosigner for the full amount of the debt" because each cosigner is jointly and severally liable for the obligation. Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). To prove that she is not liable for the debt, Petitioner 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. 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).

Petitioner states: "Divorce papers state my ex husband, Lynn Lindholm is responsible for all debts during our marriage." (Pet'r Hr'g Req.) Petitioner must provide more than a mere allegation that the debt does not exist, but must provide some documentary evidence supporting her claim. Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). On October 20, 2009, this Office ordered Petitioner to file documentary evidence no later than November 17, 2009, to prove that all or part of the alleged debt is either unenforceable or not past due. (Notice of Docketing, Order, and Stay or Referral ("Order"), dated October 20, 2009.) In response, Petitioner has not provided any documentary evidence to support her claim that the amount of the debt is unenforceable because her ex-husband alone remains liable. Petitioner has submitted no evidence to prove that she has been released of her obligation to HUD. Petitioner has therefore, not met her burden to prove that the debt in this case is not past-due or legally enforceable. In the absence of documentary evidence to support Petitioner's position, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner as set forth in the Notice of Intent.

Next, Petitioner claims that the terms of the proposed repayment schedule would create a financial hardship. (Pet'r Hr'g Req.) Pursuant to 31 C.F.R. § 285.11(f)(8)(ii),

Petitioner “may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.” When the hearing request was filed, Petitioner also filed a “HUD Financial Statement” listing some of her monthly expenses. (Pet’r Hr’g Req., attach.) On October 20, 2009, this Office ordered Petitioner to file documentary evidence no later than November 17, 2009, to prove that “repayment of this alleged debt would case a financial hardship to Petitioner...” (Order, dated October 20, 2009.)

On November 23, 2009, Petitioner filed financial statements that included copies of Petitioner’s bills and payments, receipts, and bi-weekly pay statements. (Financial Statements from Petitioner (“Pet’r Stat.”), filed November 23, 2009.) Petitioner’s bi-weekly pay statements for the three pay periods beginning September 14, 2009, and ending October 25, 2009, where Petitioner earned her current pay rate of \$10.00 per hour, indicate that her gross pay averaged \$630.43. (Pet’r Stat.) Petitioner’s bi-weekly net disposable income for the same period averaged \$578.43. (*Id.*)

The documentary evidence submitted by Petitioner shows records of payment for the following essential household expenses for which this office will credit Petitioner: water, \$40.84 (monthly); electric, \$191.28 (monthly average); homeowner’s insurance, \$53.83 (annually); property taxes, \$611 (annually); automobile insurance, \$212 (annually); gas (automobile), 17.50 (weekly); medical expenses, \$1082 (annual average for eye care, dentures, prescription medicines and medical exams); work clothing, \$300 (annually); and groceries and personal care, \$560.56 (monthly average not including alcohol). (Pet’r Stat.) The essential household expenses total \$1050.93 per month.

Petitioner’s claims regarding the following expenses are not credited by this Office because Petitioner has not submitted sufficient documentary evidence to establish either a recent record of payment, the amount of ongoing expenses, or that the expenses are essential: cable television (non-essential), internet (non-essential), cell phone (non-essential), veterinary (non-essential), newspaper subscription (non-essential), automobile maintenance (does not demonstrate the amount of ongoing expenses), installment account (items not specified to demonstrate essential), and collection account for medical expenses (no proof of payments made). This Office will, however, credit Petitioner a reasonable amount for phone service equal to \$40 per month.

With the amount allotted for phone services, Petitioner’s essential household expenses total \$1090.93 per month. Petitioner’s monthly disposable income of \$1,156.86 less her monthly bills and expenses of \$1090.93 leaves a remaining balance of \$65.93 per month or \$32.97 bi-weekly. A 15% garnishment rate of Petitioner’s bi-weekly disposable income would equal \$86.76 and leave Petitioner with a less than \$0 balance per month.

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. Petitioner has submitted sufficient documentary evidence to substantiate her claim that administrative wage garnishment of her disposable pay, in the amount sought by the Secretary (i.e., 15%),

would cause financial hardship within the meaning of 31 C.F.R. §285.11(f)(8)(ii). Therefore, I find that an order for administrative wage garnishment of Petitioner's disposable income at a rate of 5% would not create a financial hardship for Petitioner within the meaning of 31 C.F.R. §285.11(f)(8)(ii).

ORDER

For the reasons set forth above, this Office finds the debt that is the subject of this proceeding to be 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 seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 5% of Petitioner's disposable pay.



H. Alexander Manuel
Administrative Judge

March 5, 2010