



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

In the Matter of:

TERESA BENTLEY DILLOW,

Petitioner.

HUDOA No. 10-M-NY-AWG68
Claim No. 5467531 LL 9244

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Pro se

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For the Secretary

DECISION AND ORDER

On April 1, 2010, this Office received Petitioner's request for 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 "the 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 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 an undue 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 April 5, 2010, 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, dated April 5, 2010.)

Background

On February 6, 1990, Petitioner executed and delivered to A Bar G Mobile Homes, Inc., a Retail Installment Contract (“Note”) in the amount of \$17,852, which was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec’y Stat. ¶ 2; Sec’y Stat. Ex. A, Note.) Contemporaneously, on February 6, 1990, the Note was assigned by A Bar G Mobile Homes Inc. to Logan-Laws Financial Corporation. (Sec’y Stat. ¶ 3; Note, pp. 2 & 4.) Logan-Laws Financial Corporation subsequently went out of business, and the Government National Mortgage Association (“GNMA”) took over their loans. (Sec’y Stat. ¶ 4; Sec’y Stat. Ex. B, St. Laurent Decl. ¶ 4.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec’y Stat. ¶ 5.)

HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec’y Stat. ¶ 6.) HUD alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$1,544.01 as the unpaid principal balance;
- (b) \$75.12 as the unpaid interest on the principal balance at 13.5% per annum through November 23, 2009; and
- (c) interest on said principal balance from November 23, 2009 until paid.

(*Id.*; St. Laurent Decl. ¶ 6.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice of Intent”), dated March 19, 2010, was sent to Petitioner. (Sec’y Stat. ¶ 7.) In accordance with 31 C.F.R. 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. (Sec’y Stat. ¶ 8.) As of June 3, 2010, Petitioner has not entered into a written repayment agreement. (*Id.*) The Secretary’s proposed repayment schedule is 15% of Petitioner’s disposable pay. (Sec’y Stat. ¶ 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 may also 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. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner does not dispute the existence of the debt. Rather, Petitioner argues that the terms of the proposed repayment schedule are would cause her a financial hardship. Specifically, Petitioner states that, “[m]y husband and I are struggling middle class American[s] that can barely survive with the way the ecomoney [sic] has been going.” (Pet’r’s Hr’g Req.)

Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *In re Shone Russell*, HUDOA No. 09-H-NY-KK15 (June 25, 2009) (citing *In re Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986)). However, the existence of financial hardship requires a mitigation of the amount of the garnishment allowable by law. *In re David Agerton*, HUDOA No. 09-H-NY-AWG143 (citing 31 C.F.R. § 285.11(k)(3)). On April 5, 2010, this Office ordered Petitioner to file documentary evidence to support her financial hardship claim. (Notice of Docketing, p. 2.) Pursuant to the Order set forth in the Notice of Docketing, Petitioner was required to file such evidence, “no later than April 30, 2010.” (emphasis in original) (*Id.*) Petitioner did not comply with this Order. On April 23, 2010, the Secretary filed a Motion for Extension to file his documentary evidence. (Mot. for Extension, dated, April 23, 2010.) Having found good cause, this Office granted the Secretary’s Motion without objection. (Ruling and Order, issued May 6, 2010.) In the Ruling and Order, this Office, acting *sua sponte*, also granted Petitioner an extension to file her documentary evidence, on or before June 11, 2010. (*Id.*) Petitioner did not file her documentary evidence in compliance with the Ruling and Order. On June 8, 2010, this Office, again, acted *sua sponte* and granted Petitioner an extension to file her documentary evidence on or before June 21, 2010. (Order, issued June 8, 2010.) The Order also stated that “[f]ailure to comply with this Order shall result in a decision based on the documents in the record of this proceeding.” (*Id.*) Again, Petitioner failed to file her documentary evidence.

Petitioner has failed to submit any evidence to prove her financial hardship claim and has, therefore, failed to comply with the Orders issued by this Office. This Office has held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Since Petitioner does not offer any evidence that would prove that the debt is not past due, unenforceable, or that repayment would create a financial hardship, this Office finds that Petitioner’s argument fails for want of proof.

Petitioner also suggests a willingness to enter into a repayment program to repay her debt to HUD. Specifically, Petitioner states that, “I will be glad to continue to pay what I owe the monthly payment was 223.00. [sic] I can pay that until this is resolved.” (Pet’r’s Hr’g Req.) This Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Petitioners may wish to discuss this matter with counsel for the Secretary or Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His phone number is 1-800-669-5152, extension 4206. Petitioner may also request a review of their financial status by submitting to that HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

For the reasons set forth above, 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 to the extent authorized by law.



H. Alexander Manuel
Administrative Judge

October 7, 2010