



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

In the Matter of:

MELISSA S. MADRID,

Petitioner.

HUDOA No. 10-M-NY-AWG72
Claim No. 1163922 OAK 9429

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For Petitioner

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For the Secretary

DECISION AND ORDER

On April 6, 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 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 6, 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 (“Notice of Docketing”), dated Apr. 6, 2010.)

Background

On March 19, 1997, Petitioner executed and delivered to Oakwood Mobile Homes Inc., a Retail Installment Contract/Manufactured Home (“Note”) in the amount of \$30,763.30, 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.) Contemporaneously, on March 19, 1997, the Note was assigned by Oakwood Mobile Homes, Inc. to Oakwood Acceptance Corporation d/b/a Golden Circle Financial Services (“Oakwood Acceptance”). (Sec’y Stat. ¶ 3.) Oakwood Acceptance was defaulted as an issuer of Mortgage Backed Securities (“MBS”) due to its failure to comply with the Government National Mortgage Association (“GNMA” or “Ginnie Mae”) MBS program requirements. (Sec’y Stat. ¶ 4.) Upon default by Oakwood, all of its rights, title, and interest in Petitioner’s loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Oakwood and GNMA. (Sec’y Stat. ¶ 5.) As GNMA is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec’y Stat. ¶ 6.)

The Secretary has filed a statement alleging that Petitioner is currently in default on the Note. The Secretary has made efforts to collect from Petitioner, but has been unsuccessful. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$ 21,277.47 as the unpaid principal balance;
- (b) \$2,112.17 as the unpaid interest on the principal balance at 12.25% per annum through April 27, 2009; and
- (c) interest on said principal balance from April 28, 2009 until paid.

(Sec’y Stat. ¶ 7.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated January 28, 2010 was sent to Petitioner. (Sec’y Stat. ¶ 8.) 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 but Petitioner has not elected to do so. (Sec’y Stat. ¶ 9.) The Secretary proposes a repayment schedule of 15% of Petitioner’s disposable pay. (Sec’y Stat. ¶ 10.)

Discussion

Petitioner does not dispute the existence of the debt. Rather, Petitioner claims that “[n]o accounting has been provided and no copy of the file of the [P]etitioner provided to her even after request in the petition, telephone message and written notice.” (Pet’r’s Stat. ¶ 1.) Petitioner further argues that, “[w]ithout such information, the Petitioner is effectively prevented from cross examining or challenging the evidence as to accurate, since the evidence is in the government’s position and they refuse to provide copies of the same.” (*Id.* at ¶ 2.)

The Notice of Docketing issued on April 6, 2010, informed Petitioner that “[d]ocuments relating to the alleged debt are not in the possession of this Office. Petitioner may request copies of these documents by writing to: H. Elizabeth Faunce, U.S. Department of Housing and Urban Development, Ginnie Mae Monitoring Division, 451 7th St., SW, Room PC 3FL, Washington, DC 20410.” (emphasis in original) (Notice of Docketing, at p. 3.) On August 3, the Secretary filed a supplemental statement, which was supported by a sworn declaration of Christopher C. Haspel, the Director of the Mortgage-Backed Securities Monitoring Division of Ginnie Mae. The supplemental statement stated that, “[o]n July 1, 2010, Ginnie Mae’s Master Subservicer, Ofori Lender Services, sent Petitioner’s complete servicing file of 73 pages, including histories to Petitioner’s attorney Frederick Sherman via UPS Next Day Mail.” (Sec’y Suppl. Stat. ¶ 5; Haspel Decl. ¶ 6.) As of the date of this Decision and Order, Petitioner has not challenged HUD’s evidence supporting its claim that the debt is past due and enforceable despite having had a copy of her complete file for four months.

Petitioner also claims that pursuant to 31 C.F.R. § 285.11(e)(10)(ii), “[t]he appeal and several pleading [sic] have been filed to get the garnishment lifted but that has not occurred.” (Pet’r’s Stat. ¶ 4.) Pursuant to 31 C.F.R. § 285.11(e)(10)(ii) this Office ordered HUD to “suspend the withholding order beginning on the 61st day after receipt of the hearing request and continuing until a hearing is held and a decision is rendered. (Notice of Docketing, at p. 3.) The Secretary addressed this issue in the supplemental statement by stating that, “on June 18, 2010, as a result of the stay imposed by the Court, the Department of the Treasury Financial Management Service notified Petitioner’s employer to stop garnishing Petitioner’s wages.” (Sec’y Suppl. Stat. ¶ 4; Haspel Decl. ¶ 7.) This Office notes that Petitioner’s employer was not notified in a timely manner. “*Day* means calendar day. For the purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.” (emphasis in original) 31 C.F.R. § 285.11(c). Pursuant to §§ 285.11(c) and 285.11(e)(10)(ii), suspension of the withholding order should have occurred on June 7, 2010.

Petitioner also argues that she was not properly notified before the imposition of the wage garnishment order and therefore, “[t]here has been a denial of due process by prejudgment garnishment.” Petitioner claims that “31 C.F.R. § 285.11 requires notice and due process rights to the [P]etitioner based on mailing first class mail to the [P]etitioner. No proof has been provided such occurred and that evidence has been refused.” (Pet’r’s Stat. ¶ 3.) Petitioner correctly asserts that notice must be sent via first class mail to Petitioner. However, this Office has held that a Notice of Intent is effective upon dispatch, if properly and reasonably addressed and that actual receipt is not required by the statute. *In re Kenneth Holden*, HUDBCA No. 89-3781-K293 (Jun. 6, 1989). Further, a Notice of Intent is properly and reasonably addressed if it is sent to Petitioner’s last known address. 31 C.F.R. § 285.11(e)(1).

On July 27, 2010, the Secretary was ordered to address the issue of notice raised by Petitioner. In the Secretary’s Supplemental Statement, the Secretary stated that the Notice of Intent, “was sent to Petitioner via first class mail to her last known address: 400 S. Myrtle St. Deming, NM 88030. This address was obtained from Petitioner’s Credit Report.” (Sec’y Suppl. Stat. ¶ 3; Haspel Decl. ¶ 4.) Petitioner has not provided evidence to rebut the Secretary’s claim. This Office has held that, “[u]nless otherwise advised by Petitioner of a change of address or a different address, reliance upon Petitioner’s last known address of official records is appropriate.” *In*

re Diane Sweet, HUDOA No. 10-H-NY- AWG54, at 3 (Aug. 25, 2010). Accordingly, I find that the Secretary has met his burden to prove that Petitioner was properly notified under 31 C.F.R. § 285.11.

Lastly, Petitioner states that, "I am prepared to make payments equal to the garnishments if it is released...." (Pet'r's Aff. ¶ 3.) This Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Petitioner 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 telephone number is 1-800-669-5152, extension 4206.

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. It is

FURTHER ORDERED that any garnishment of Petitioner's wages that occurred after June 7, 2010 and before June 18, 2010 be refunded to Petitioner.



H. Alexander Manuel
Administrative Judge

November 2, 2010