



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

In the Matter of:

Jacqueline Johnson,
Petitioner

HUDOA No. 10-M-NY-AWG77
Claim No. 5470675 LL 9244

Jennifer Kirby, Esq.
Thorp, Clarke, Neville & Kirby, P.A.
150 N. McPherson Church Rd., Ste. B
Fayetteville, NC 28303

For Petitioner

Julia M. Murray, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
For New York/New Jersey Field Offices
26 Federal Plaza, Room 3237
New York, NY 10278-0068

For the Secretary

DECISION AND ORDER

On April 28, 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 May 3, 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 May 3, 2010.)

Background

On July 18, 1990, Petitioner executed and delivered to WJC Enterprises dba Leader Homes, a Retail Installment Contract (“the Note”) in the amount of \$13,505.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (“Sec’y Stat.”), filed September 10, 2010, ¶ 2, Ex. A.) On July 23, 1990, the Note was assigned by WJC Enterprises dba Leader Homes to Logan-Laws Financial Corporation. (Sec’y Stat., ¶ 3, Ex. A, pp. 1, 3.) Logan-Laws Financial Corporation subsequently went out of business, and the Government National Mortgage Association (“GNMA”) took over its loans. (Sec’y Stat., 4; Declaration of Christopher C. Haspel, Director, Mortgage-Backed Securities Monitoring Division of the GNMA, HUD (“Haspel Decl.”), dated September 9, 2010, ¶ 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; Haspel Decl., 5.)

The Secretary has attempted to collect the amount due under the Note, but Petitioner remains delinquent. (Sec’y Stat., 6; Haspel Decl., ¶ 6.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

- (a) \$3,544.41 as the unpaid principal balance;
- (b) \$69.33 as the unpaid interest on the principal balance at 14% per annum through April 27, 2009; and
- (c) interest on said principal balance from April 28, 2009 until paid.

(*Id.*)

Pursuant to 31 C.F.R. 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated September 26, 2009, was sent to Petitioner. (Sec’y Stat., ¶ 7; Haspel Decl., ¶ 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; Haspel Decl., ¶ 7.) As of September 10, 2010, Petitioner has not entered into a written repayment agreement in response to the notice. (Sec’y Stat., ¶ 8.) Petitioner did not provide HUD with her current pay stub. (Haspel Decl., ¶ 8.) The Secretary proposes a repayment schedule of 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 9; Haspel Decl., ¶ 8.)

Discussion

Petitioner argues that the alleged debt to HUD is unenforceable because she was “unaware of the procedure followed here to obtain the garnishment. No notice was given.”

(Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed March 28, 2010.) Petitioner further asserts that she did not receive notice of the debt, notice of a judgment, nor notice that her wages would be garnished. (Petitioner's Response to the Order issued August 16, 2010 ("Pet'r Resp."), dated September 21, 2010, ¶¶ 1-3.) Also Petitioner claims that she was not notified of the total amount alleged to be due and owing. (Pet'r Resp., ¶ 4.)

This Office ordered the Secretary to file documentary evidence to prove that the alleged debt in this case is past due and legally enforceable. (Order, dated August 16, 2010.) This Office also ordered Petitioner to file "documentary evidence to prove that all or part of the alleged debt in this case is not past due or not legally enforceable." (*Id.*) On September 10, 2010, the Secretary complied with the Order by filing documentary evidence. (Sec'y Stat.) Although, Petitioner responded with additional legal arguments, Petitioner failed to file documentary evidence or other proof to support her arguments.

Petitioner has filed no documentary evidence to support her assertion that the garnishment amount is incorrect or that there was no notice given. "Assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due or enforceable." *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, Petitioner's assertion that the amount of the garnishment is incorrect must fail for want of proof. 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 and the debt that is the subject of this proceeding to be past due and enforceable in the amount alleged by the Secretary.

ORDER

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

November 18, 2010