OFFICE OF HEARINGS AND APPEALS
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0001

In the Matter of:

Lisa Wommack,

Petitioner

HUDOA No. 11-H-CH-AWG109
Claim No. 77-088215-4B
Date: April 13, 2012

DECISION AND ORDER

On June 20, 2011, Petitioner filed a 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"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment a mechanism for the collection of debts owed to the United States Government.

The administrative judges of this Court have been designated to adjudicate contested cases where the HUD Secretary seeks to collect debts by means of administrative wage garnishment. This case is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. Pursuant to 31 C.F.R. § 285.11(f)(4), on June 21, 2011, 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"), p. 2, issued June 21, 2011.)

Background

On June 11, 1984, Petitioner executed and delivered to Countrywide Acceptance Corporation ("Countrywide") an installment note ("Note") in the amount of $18,486.00, in exchange for a loan to purchase a manufactured home. (Secretary's Statement ("Sec'y Stat."), filed July 21, 2011, ¶ 2; Ex. A.) The Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703, and contemporaneously assigned to the Government National Mortgage Association ("GNMA"). (Sec'y Stat., ¶ 2; Note.)

G.E. Capital Asset Management Corporation, the Master Subservicer for GNMA, assigned the Note to the United States of America on December 12, 1995, after Petitioner failed to make payments on the Note. (Sec'y Stat., ¶ 3; Ex. A, p. 1.) The Secretary is the holder of the Note on behalf of the United States. (Sec'y Stat., ¶ 3.)

HUD has unsuccessfully attempted to collect the debt from Petitioner, but Petitioner remains in default. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

(a) $3,437.14 as the unpaid principal balance as of June 30, 2011;

(b) $472.91 as the unpaid interest on the principal balance at 5 % per annum through June 30, 2011;
(c) interest on said principal balance from July 1, 2011, at 5% per annum until paid.

(Sec'y Stat., ¶ 4, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated July 1, 2011, ¶ 4.)

On September 12, 1989, Home Owners Funding Corp. of America sent the Petitioner a loan modification contract to Petitioner's address of Rt. 9, Box 595, Longview, Tx. 75601, lowering the interest rate from 13.5% to 12.75%. The contract was returned and signed by Petitioner on September 27, 1989. (Sec'y. Stat., ¶ 5, Ex. A1.) The Secretary stated that "attached as Exhibit A is a copy of the Notice of Acceleration and Notice of Sale dated June 16, 1995, sent to Petitioner at Rt. 9 Box 595 Longview, TX from G.E. Capital Asset Management Corporation." (Id.) The signature on the return receipt dated June 19, 1995 is Chase Gipson. (*Id.*, Ex. B1.)

"Petitioner made 120 of 180 payments due on the loan prior to default on July 1, 1994." (Sec'y. Stat., ¶ 7.) "The home was subsequently repossessed and sold, pursuant to 24 C.F.R. [§] 201.53." "An appraisal was obtained in accordance with [§] 201.51 (b) (3) on August 1, 1995 with an 'as is' value of $2,600." (Sec'y. Stat., Ex. D.) "The Petitioner's account was credited $3,600 for the sale of the manufactured home." (*Id.*, Ex. E.)

On June 2, 2011, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent") was sent to Petitioner. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 10.) 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. Petitioner has not entered into such an agreement. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 11.)

Several attempts were made to obtain a copy of the Petitioner's current pay stub. (Sec'y. Stat., ¶ 11.) To date, Petitioner has not provided the Secretary with a copy of her current pay statement. (Sec'y Stat., ¶ 11; Dillon Decl., ¶ 12[1].) The Secretary proposes a repayment schedule of either $125.00 per month, which will liquidate the debt in approximately three years, or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 11; Dillon Decl., ¶ 12.)

Discussion

Petitioner 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.*

[1] Petitioner has challenged the Secretary's claim that "several attempts were made to obtain a copy of the Petitioner's current pay stub." In response to this Court's Order regarding attempts to obtain Petitioner's pay statement, Brian Dillon, the director of HUD's Financial Operations Center, stated that his sworn testimony of these attempts was based on representations made to him by a HUD Debt Servicing Representative. (Supplemental Declaration of Brian Dillon, filed November 9, 2011.) Dillon has acknowledged that there is no evidence to substantiate the Representative's claim. As such, the Secretary's Statement that efforts were made to obtain Petitioner's pay statement is unsupported by record evidence and will be ignored.

In this proceeding, Petitioner re-alleged the defense of judicial bias raised in her previously adjudicated administrative offset proceeding, a proceeding that is considered a separate proceeding from the one at hand. Upon an examination of the record, the Court discovered that Petitioner submitted, with the Hearing Request for this proceeding, a letter that referenced a HUD case number and claim number that was associated with the previously adjudicated administrative offset proceeding initiated by Petitioner. (Hr'g. Req., Attached Letter.) Petitioner made multiple references to issues associated with the previous administrative offset proceeding, but, none of these issues were raised in this proceeding as relevant to the outcome of this proceeding. As a result, such matters will not be addressed in this case because this Court has consistently maintained that administrative offset proceedings and administrative wage garnishment proceedings exist independent of each other. (*See*, *Donald McMillan*, HUDOA No. 09-H-NY-AWG03, (April 6, 2009); *Muriel Redd*, HUDOA No. 08-H-CH-AWG19, (December 12, 2008.)) Therefore, consistent with case law precedent, the issues Petitioner raised in relationship to her previous administrative offset proceeding will not be addressed in the instant wage garnishment proceeding.

Petitioner has raised, nevertheless, other issues that are relevant to this proceeding: 1) HUD failed to procure in good faith "a reasonable price for the assets as evidenced between the spread for 'as is' and 'as repaired;' " 2) "HUD had a right of action against the manufacturer and chose not to pursue it;" and, 3) "the time to try to collect on the alleged debt has long expired." (Request for Hearing for Administrative Wage Garnishment, ("AWG Hr'g. Req."), filed June 20, 2011; Petitioner's Letter ("Pet'r's. Aug. Ltr."), filed August 1, 2011.)

Petitioner first states that "[T]he debt is not valid," and that, "HUD was negligent in the manner in which the asset was disposed..." (AWG Hr'g. Req., p. 1.) However, Petitioner fails to identify which federal, state, or local laws were violated that would prove that HUD was negligent. Petitioner also fails to describe what actions or inactions of HUD, if any, constitutes HUD's alleged negligence.

The Secretary states, on the other hand, that Petitioner's home "was subsequently repossessed and sold, pursuant to 24 C.F.R. 201.53," and that "[a]n appraisal was obtained in accordance with § 201.51 (b) (3) on August 1, 1995 with an 'as is' value of $2,600." (Sec'y. Stat., ¶ 8, Ex. D.) "Petitioner's account was credited for $3600 for the sale of the manufactured home." (Id., Ex. E.) As support, the Secretary provided copies of the appraisal of Petitioner's property in "as is" condition and the Voucher that reflected Petitioner's account being credited for $3600 for the sale of the manufactured home. In addition, 24 C.F.R. § 201.53(b) provides:

> Where the lender obtains title to property securing a manufactured home loan by repossession or foreclosure, the property shall be sold for the best price obtainable before making an insurance claim....The best price obtainable shall be the greater of: ...
>
> (b) The appraised value of the property before repairs (as determined by a HUD-approved appraisal obtained in accordance with § 201.51(b) (3).

Section 201.51(b) (3) further provides that, "the lender shall obtain a HUD-approved appraisal of the property as soon after repossession as possible, or earlier with the permission of the borrower." In this case, HUD became the holder of the Note upon default by Petitioner. In accordance with 24 C.F.R. § 201.53(b) (3), and upon repossession of Petitioner's property, an appraisal was obtained based upon the "as is" value of $2,600.00. Based upon the record, appropriate steps were taken by HUD to ensure that a reasonable price was obtained to dispose of the manufactured home as an asset. HUD's appraisal lists the "as-is" price of the home at $2,600, and the "as repaired" price at $7,700. (Sec'y. Stat., Ex. D.) HUD is not, however, obligated to conduct repairs on the home. As a result, Petitioner errs in looking to the "as repaired" price as a potential sale price. The home sold for $1,000 above the "as-is" price, and therefore constituted the best price obtainable at that time. The Secretary also provided sufficient notice to Petitioner consistent with the notice requirement under Texas law because the notice of acceleration and notice of sale was mailed by GNMA to Petitioner in a timely manner, prior to the foreclosure sale of Petitioner's home.

The burden now shifts to Petitioner to produce evidence that would otherwise refute the evidence presented by the Secretary that sufficiently proves that the manner in which the asset was disposed was negligent. Petitioner has failed to introduce such evidence for the Court's review. This Court has consistently maintained that assertions without evidence are insufficient in determining whether a debt is past due and legally enforceable. *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Without such evidence to establish the credibility of Petitioner's claims, the Court is unable to determine the validity of Petitioner's position. Therefore, Petitioner's argument fails for lack of proof.

Petitioner next claims that collection of the subject debt is unenforceable because "HUD had a right of action against the manufacturer and chose not to pursue it". (Pet'r's Aug. Ltr.) In response, the Secretary states that the manufactured home had a one-year warranty against any "nonconformity with the Federal manufactured home standards or/and defects in material or workmanship that becomes evident within one year after the date of delivery." (Sec'y Stat., ¶ 6.) The Secretary adds that "Petitioner did not raise a defective construction complaint within that year, or, indeed, at any point prior to her default." (*Id.*, ¶ 7.)

Petitioner states, in response, that the reference by the Secretary "to a manufacturer's warranty is irrelevant to this matter and completely off point." (Pet'r's. Aug. Ltr.) But again, Petitioner has failed to provide sufficient evidence in support of her claim. Petitioner does not explain how a potential HUD suit against the manufacturer would release her from her contractual obligation to repay the alleged debt. Petitioner's position that HUD has a right of action against the manufacturer based upon a claim that Petitioner herself failed to raise while the property was under warranty is unavailing. Because Petitioner has not persuaded the Court that HUD has a cause of action against the manufacturer that preclude collection of the alleged debt, I find that Petitioner has failed to meet her burden of proof and thus remains legally obligated to pay the debt that is the subject of this proceeding.

Finally, Petitioner argues that, "the time to try to collect on the alleged debt has long expired." (Pet'r's. Aug. Ltr.) As support, Petitioner cites to 45 C.F.R. § 608.3(d) in which it

states that "[N]o collection by administrative offset shall be made on any debt that has been outstanding for more than ten years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering the debt." (Pet'r's Ltr.)

Upon reviewing the regulation referenced by Petitioner, this Court found that the cited regulation of Title 45 (Public Welfare) of the Code of Federal Relations actually covered matters of public welfare for the National Science Foundation, and not matters pertaining to administrative offsets relevant to the case at hand. Matters in this Court are governed by the HUD regulations pertaining to administrative offsets provided in Title 24 (Housing and Urban Development), and for matters pertaining to administrative wage garnishments provided in Title 31 (Money and Finance: Treasury). Title 45 (Public Welfare), of the Code of Federal Relations, details procedures for the National Science Foundation, not for HUD. Furthermore, this same section describes a statute of limitations period for administrative offsets of federal payments in public welfare cases, not debt collection by means of administrative wage garnishment relevant to the issues in this case. Similar limitation language to that quoted by Petitioner was provided, however, under 31 U.S.C. § 3716, the statute that governs HUD's administrative offset procedures. Section 3716 was amended in 2008 to *eliminate* the limitations period following a ruling by the United States Supreme Court that no statute of limitations exists in administrative proceedings. *See B.P. America Prod. Co. v. Burton*, 549 U.S. 84 (2006). The amended statute now reads: "[n]otwithstanding any other provision of law, regulation, or administrative limitation, no *limitation on the period within which an offset may be initiated or taken pursuant to this section shall be effective.*" 31 U.S.C. § 3716(e) (1) (2008). (Emphasis added.) This Court then followed the case precedent set by the U.S. Supreme Court in *B.P. America* and held that administrative offset cases are no longer barred by *any* statute of limitations. (Emphasis added.) *See Angela Cortez*, HUDOA No. 09-M-CH-AWG102 (July 20, 2009).

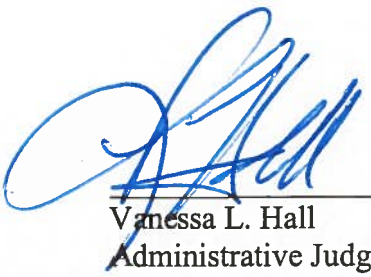
The statutory language authorizing administrative wage garnishments — 31 U.S.C. § 3720D — has never contained limitation language and as such, Petitioner's limitations argument is unavailing. *See Thomas A. Franzman*, HUDOA No. 09-H-CH-AWG156 (January 8, 2009); *Karen T. Jackson*, HUDOA No. 09-H-NY-AWG87 (June 3, 2009); *Douglas P. Hansen*, HUDBCA No. 06-A-CH-AWG03 (February 13, 2007). Therefore, I find that the collection of the alleged debt by means of administrative wage garnishment is not barred by the statute of limitations.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing the stay of referral of this matter to the U.S. Department of 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 15% of Petitioner's monthly disposable income.



Vanessa L. Hall
Administrative Judge