



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

In the Matter of:

**LENORA JANE SHERMAN,**  
  
Petitioner.

HUDOA No. 11-H-CH-AWG27  
Claim No. 721002551

Lenora Jane Sherman  
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Missouri City, TX 77489-4194

*Pro se*

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For the Secretary

**DECISION AND ORDER**

Lenora Jane Sherman ("Petitioner"), requested a hearing concerning a proposed administrative wage garnishment relating to 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 November 19, 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 November 19, 2010.)

### **Background**

On August 29, 2003, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note (“Note”) to secure a partial claim paid on her behalf by the Secretary to pay arrearages on her primary FHA-insured mortgage and avoid foreclosure of her home. (Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable and Proposed Repayment Schedule (“Sec’y. Stat.”), filed December 8, 2010, ¶ 1; Ex. 1, Note.) The original amount to be repaid under the Note was \$8,575.69. (Sec’y. Stat., ¶ 2.)

By the terms and conditions of the Subordinate Note, the Subordinate Note becomes due and payable when the original FHA mortgage matures, when the borrower pays the primary note in full, when the maturity date of the primary note has been accelerated, when the primary note or related security instrument is no longer insured by the Secretary or when the property is no longer occupied by the purchaser as his or her principal residence. (*Id.*; Note at ¶ 3(A).) On or around December 14, 2004, the FHA mortgage insurance on the primary note and security instrument was terminated as the mortgagee indicated the primary mortgage was paid in full. (Sec’y. Stat., ¶ 3; Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, Financial Operations Center of the United States Department of Housing and Urban Development (“Porter Decl.”), dated December 8, 2010, ¶ 4.)

The Secretary alleges that pursuant to the terms and conditions of the Subordinate Note the debt is now past due and legally enforceable. (Sec’y. Stat., ¶ 4.) HUD has attempted to collect the amounts allegedly due under the Subordinate Note, and alleges that Petitioner remains delinquent. (*Id.*) The Secretary alleges that Petitioner is justly indebted to HUD in the following amounts:

- (a) \$4,366.31<sup>1</sup> as the unpaid principal balance as of November 30, 2010;
- (b) \$130.95 as the unpaid interest on the principal balance at 4% per annum through November 30, 2010; and
- (c) interest on said principal balance from December 1, 2010 at 4% per annum until paid.

(Porter Decl., at ¶ 5.) A Notice of Intent to Collect by Wage Garnishment, dated October 22, 2010 was mailed to Petitioner. (Sec’y. Stat., ¶ 7.) Petitioner was afforded the opportunity to enter into a repayment agreement but declined to do so. (*Id.* at ¶ 8.) Petitioner’s offer to settle this debt for past offsets received is not acceptable to the Secretary. (*Id.* at ¶ 9.) The Secretary has made attempts to obtain documentation of Petitioner’s income but Petitioner declined to comply. (*Id.* at ¶ 10.) Accordingly, the Secretary proposes the sum of \$150.00 per month, or 15% of Petitioner’s disposable income, as the appropriate repayment plan. (*Id.*)

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<sup>1</sup> The Secretary’s Statement listed the unpaid principal as totaling \$4,366.61. Upon review of the Porter Declaration, cited by the Secretary’s Statement, this Office determined that the correct amount, per the Porter Declaration, is \$4,366.31.

## 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 an undue 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 disputes the balance and interest due because, “we refinanced our home in 2004. At the time the loan was to be incorporated back into the refinance. We never heard from HUD that the loan Promissory Note was due.” (Pet’r’s Doc. Evid., filed February 7, 2011.) Petitioner also states that, “it was never intentional to avoid the debt. I thought it was incorporated into the refinance of the home since we had not had any notice of any further debt owed.” (Pet’r’s Hr’g. Req., filed November 15, 2010.) As support, Petitioner filed a copy of her Uniform Residential Loan Application (“URLA”) which listed the HUD debt as a liability “which will be satisfied upon...refinancing of the subject property.” (Pet’r’s Doc. Evid., URLA at p. 3, dated August 7, 2010.) However, the URLA only shows that as of August 7, 2010—the date the URLA was signed—the debt to HUD had not been satisfied. Although the URLA includes the subject debt as a liability, it is insufficient to show that the debt to HUD was included in either of the refinances that took place in 2004 and 2007. *See Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004) (holding that “[t]here must either be a release in writing from the lender specifically discharging Petitioner’s obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release.”) In addition, this Office has held that “[w]hen the principal balance is valid and legally enforceable, so too is the interest that attaches to it.” *Thomas R. Herrin*, HUDBCA No. 88-2848-H372 (December 9, 1987). As Petitioner has failed to prove that the debt in this case was satisfied in a refinance, I find that Petitioner remains legally obligated to pay the entire balance of the debt alleged to be owed.

Petitioner next claims that “[i]n March of 2010 our income tax was taken for \$5262.00 unexpectedly. We had [a] disaster in 2008 from Hurricane Ike, I lost my job due to layoff in 2009 so we really needed these monies to get our heads above water while taking care of elderly mother.” (Pet’r’s Doc. Evid.) Petitioner adds further that “I am at a financial ruin at this point in my life” (Pet’r’s Hr’g. Req.). This Office notes that financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *Shone Russell*, HUDOA No. 09-H-NY-KK15 (June 25, 2009) (*citing 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. 31 C.F.R. §§ 285.11(k)(3), if Petitioner presents evidence in support of her claim of financial hardship. (*See also* 31 C.F.R. § 285.11(f)(8)(ii).) Despite being ordered on three occasions to submit the necessary documentary evidence in support of her financial hardship claim, Petitioner failed to comply with any of the Orders issued. Accordingly, I find that Petitioner has abandoned her claim of financial hardship and, as such, her claims fails for lack of proof.

In addition, Petitioner also claims that she was involuntarily separated from employment in 2009.” (Pet’r Hr’g. Req.) 31 C.F.R. § 285.11 provides that, “[t]he agency may not garnish

the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing the agency of the circumstances surrounding an involuntary separation from employment.” 31 C.F.R. § 285.11(j). However, the burden is on Petitioner to prove that she was involuntarily separated from employment and has not been reemployed continuously for at least 12 months. *Id.* A review of the record of this proceeding reflects that Petitioner has not met her burden of proof, again despite being ordered to do so. Therefore, I find that the Secretary is not barred from garnishing Petitioner’s wages in order to satisfy the debt that is the subject of this proceeding.

Lastly, Petitioner requests that this debt to HUD be forgiven. (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 the Department. Petitioner may wish to discuss this matter with counsel for the Secretary or Lester J. West, Director HUD Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206. A review of Petitioner’s financial status may be conducted if Petitioner submits to that HUD office a Title I Financial Statement (HUD Form 56142).

As a final point, Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

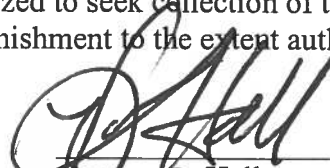
If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party.* (emphasis added).

Accordingly, because Petitioner has failed to comply with any of the Orders issued by this Office, I find that Petitioner’s non-compliance to the Orders issued by this Office provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

### **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.

  
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Vanessa L. Hall  
Administrative Judge

April 26, 2011