



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

In the Matter of:

Joyce Jenkins,
 Petitioner

HUDOA No. 11-H-NY-AWG100
 Claim No. 52-0883319AV

Joyce Jenkins
 789 Medway Drive
 Orangeburg, SC 29118-2832

Pro se

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 Urban Development
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 26 Federal Plaza, Room 3237
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For the Secretary

DECISION AND ORDER

On May 20, 2011, 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 have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is 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 a 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) and (f)(10), on May 24, 2011, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision, unless a wage withholding

order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated May 24, 2011.)

Background

On May 24, 1993, Petitioner executed and delivered a Retail Installment Contract (“Note”) in the amount of \$16,293.70 to Edisto Housing Center Inc., 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.”) ¶ 2, filed June 22, 2011; Declaration of Christopher C. Haspel, Director, Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association (“Ginnie Mae”) within HUD (“Haspel Decl.”) ¶ 3, dated June 14, 2011.) Contemporaneously, on May 24, 1993, the Note was assigned to Logan-Laws Financial Corporation (“Logan-Laws”). (Sec’y Stat. ¶ 3; Haspel Decl. ¶ 3.) Logan-Laws was defaulted as an issuer of Mortgage Backed Securities (“MBS”) due to its failure to comply with Ginnie Mae’s MBS program requirements. (Sec’y Stat. ¶ 4; Haspel Decl. ¶ 4.) Upon default by Logan-Laws, all of its rights, title, and interest in Petitioner’s loan were assigned to Ginnie Mae by virtue of the Guarantee Agreement entered into between Logan-Laws and Ginnie Mae. (Sec’y Stat. ¶ 5; Haspel Decl. ¶ 4.) As Ginnie Mae is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec’y Stat. ¶ 6; Haspel Decl. ¶ 5.)

Petitioner is currently in default on the Note. (Sec’y Stat. ¶ 7.) The Secretary has made efforts to collect from Petitioner, but has been unsuccessful. (Sec’y Stat. ¶ 7; Haspel Decl. ¶ 6.) The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$8,612.10 as the unpaid principal balance;
- (b) \$0.00 as the unpaid interest on the principal balance at 13% per annum through June 14, 2011;
- (c) interest on said principal balance from June 15, 2011 until paid; and
- (d) \$2,711.04 as the unpaid penalty.

(Sec’y Stat. ¶ 7; Haspel Decl. ¶ 6.) Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated April 13, 2011, was sent to Petitioner. (Sec’y Stat. ¶ 8; 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 under mutually agreeable terms. (Sec’y Stat. ¶ 8; Haspel Decl. ¶ 7.)

The Secretary’s proposed repayment schedule is 10% of Petitioner’s disposable pay. (Sec’y Stat. ¶ 11; Haspel Decl. ¶ 9.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), if Petitioner disputes the existence or amount of the debt, Petitioner “must present, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect.”

First, Petitioner objects to the enforceability of the debt, stating that she has “no documents supporting the loan that [she] owe[s] the government.” (Pet’r’s Hr’g Req., filed May 20, 2011.) In response, the Secretary states that “[o]n May 17, 2011, [Ginnie Mae] sent all documents related to the subject debt to the Petitioner.” (Sec’y Stat. ¶ 10; Haspel Decl. ¶ 8.)

In the Notice of Docketing, this Office stated that “[d]ocuments relating to this alleged debt are not in the possession of this Office.” (Notice of Docketing.) The Notice of Docketing further informed Petitioner that she must request copies of her debt records by forwarding a request to:

Kim McManus
U.S. Department of Housing and Urban Development
Financial Operations Center
52 Corporate Circle, Albany, NY 12203

(*Id.*) Therefore, it was Petitioner’s responsibility to obtain any records relating to the debt. Furthermore, in response to an Order from this Court, the Secretary filed a Supplement to the Secretary’s Statement in which the Secretary stated that “counsel for the Secretary sent Petitioner a copy of the Retail Installment Contract that forms the basis for this proceeding when a copy of the Secretary’s Statement dated June 2, 2011 was mailed to Petitioner.” (Supplement to Secretary’s Statement, “Sec’y Supp., ¶ 4.)

The Secretary also provided a sworn declaration from the Director of the GNMA Monitoring Division. Further research indicated that “it is notated in the Federal Government’s database FedDebt system’s Treasury Department “Case History Notes” that on 11/03/2011 and 11/04/2011 respectively “the agency provided the proof of debt. I mailed a copy of it to the debtor.” (Sec’y Supp., Ex. A, ¶ 5.) Further FedDebt Treasury Case History Notes show “acknowledgement of the outstanding debt by the debtor back on 09/20/06... ‘Debtor called to obtain current balance. We discussed r/a [repayment agreement] based on 36-month time frame. Debtor states she cannot enter into a r/a and have offset occur as well...enter into a voluntary payment plan. She understood.’ ” (Id.)

Petitioner has not presented evidence that would otherwise refute the evidence presented by the Secretary and prove that Petitioner was not aware of the alleged debt, or prove that Petitioner did not possess the documents related to the alleged debt. Therefore, Petitioner’s allegation is without merit.

In addition, Petitioner has failed to file documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due. This Office specifically ordered Petitioner to file documentary evidence on three separate occasions, but Petitioner failed to comply with each Order. (Notice of Docketing; Order to Pet’r, dated June 27, 2011; Order to Show Cause, dated Aug. 31, 2011.) 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-7300 (July 3, 1996)). Therefore, since Petitioner does not offer any

documentary evidence that otherwise would prove that the debt is unenforceable, I find that Petitioner's argument fails for want of proof.

As a final point, Rule 26.4(c) 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).

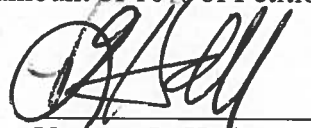
Therefore, because Petitioner has also failed to comply with any of the Orders issued by this Office, I find that Petitioner's non-compliance to the Orders issued by this Office provides a basis for rendering a decision against Petitioner pursuant to Rule 26.4 of Title 24 of the Code of Federal Regulations.

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 stay of referral in 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 refer this matter to the U.S. Department of the Treasury for administrative wage garnishment in the amount of 10% of Petitioner's disposable income.


Vanessa L. Hall
Administrative Judge

January 13, 2012