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

In the Matter of:	
Teresa Rivera Ward,	HUDOA No. 11-M-CH-AWG113
Petitioner	Claim No. 77097013-20B

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Pro se

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DECISION AND ORDER

On June 24, 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" or "the Department") by Petitioner. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to utilize 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 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. § 17.170. Pursuant to 31 C.F.R. § 285.11(f)(4), on June 28, 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"), 2, issued June 28, 2011.)

Background

On February 9, 1994, Petitioner executed and delivered to First Texas Bank a home improvement installment note ("Note") that was insured against default by HUD pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y Stat."), ¶ 2, filed August 18, 2011; Ex. A, Note.) After Petitioner failed to make payments on the Note, First Texas Bank assigned the Note to the United States of America. (Sec'y Stat., ¶ 3; Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 3, dated July 11, 2011.) The Secretary is the holder of the Note on behalf of the United States. (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 3.)

HUD's attempts to collect the alleged debt from Petitioner have been unsuccessful. (Sec'y Stat. ¶ 4; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

(a) $857.10 as the unpaid principal balance as of June 30, 2011;
(b) $3.57 as the unpaid interest on the principal balance at 5.0% per annum through June 30, 2011; and
(c) interest on said principal balance from July 1, 2011 at 5.0% per annum until paid.

(Sec'y Stat., ¶ 4; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Wage Garnishment Proceedings ("Garnishment Notice"), dated May 24, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 5.) The Secretary has been unable to obtain a copy of Petitioner's pay statement, and so requests a repayment schedule of either 15% of Petitioner's disposable income or $86.36 per month, the monthly payment indicated on the Note. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 8.)

Discussion

The Secretary bears the initial burden of proving the existence and amount of the alleged 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 or unenforceable. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner may also present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship, or that collection of the debt may not be pursued due to operation of law. (*Id.*)

As evidence of the existence and amount of the debt here, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note, a copy of the Note's assignment to HUD, and the sworn testimony of the Director of HUD's Asset Recovery Division. (See Sec'y Stat; Ex. A; Ex. B). I find that the Secretary has therefore met his burden.

Petitioner disputes the existence, amount and enforceability of this debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed June 24, 2011.) Specifically, Petitioner contends that (1) her ex-husband was awarded the house and its associated debts as a result of their 1996 divorce; (2) the garnishment amount does not reflect two offsets from Petitioner's federal tax return, (3) she did not receive proper notice of the tax offsets or the wage garnishment action at issue here, and (4) the debt was discharged as part of Petitioner's Chapter 13 bankruptcy in 1997. (Pet'r's Hr'g Req., pp. 1-2; Petitioner's Declaration ("Pet'r's Decl."), filed August 15, 2011.)

Petitioner first contends that she is unsure if she owes the debt because her ex-husband was to assume liability for the house pursuant to their divorce decree. (Pet'r's Hr'g Req., p. 1.) This Office has consistently ruled that co-signers of a loan are jointly and severally liable for the obligation. As a result, "a creditor may sue the parties to such obligation separately or together." *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). As such, "the Secretary may proceed against any co-signer for the full amount of the debt." *Hedieh Rezai,* HUDBCA No. 04-A-NY-EE016 (May 10, 2004).

Additionally, the Secretary's right to collect the alleged debt in this case emanates from the terms of the Note. *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). The second page of Petitioner's Note expressly states that any co-signer may "have to pay up to the full amount of the debt" if the Note's holder so chooses. (Note, p. 2.) The Secretary is therefore entitled to seek collection from Petitioner, independently, for the entire balance of the subject debt.

Petitioner is liable for the subject debt unless she files evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir* (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999).

In the instant case, Petitioner has failed to produce evidence of a written release from her obligation to pay the alleged debt or to produce evidence of valuable consideration paid to HUD in satisfaction of the debt. Petitioner's principal argument against her liability is that her divorce decree assigned the debt to her ex-husband. (Pet'r's Hr'g Req., pp. 1-2; Pet'r's Decl., ¶ 2.) Where a divorce decree purports to release one spouse from a joint obligation, the claims of the existing creditors against that spouse are not affected unless the creditors were parties to the action. *Deborah Gage*, HUDBCA No. 86-1727-F286 (January 14, 1986). Since neither HUD nor First Texas Bank were parties to the divorce action, the divorce decree only determined the rights and liabilities as between Petitioner and her ex-husband. The rights of the Note holder were unaffected. *Kimberly S. King (Thiede)*, HUDBCA No. 89-487-L74 (April 23, 1990). I find that without proof of a written release or valuable consideration paid to HUD, Petitioner remains legally obligated to pay the subject debt as a co-signer of the Note.

Petitioner next argues that her 2009 federal tax return of $325.00 and her 2010 federal tax return of $1,114.24 were intercepted to repay the instant debt. (Pet'r's Stat., ¶ 9.) Petitioner

claims she received no prior notice of either offset, and that the intercepted funds are not reflected in the Garnishment Notice. (*Id.*)

HUD regulations require that a debtor receive written notice at least 65 calendar days prior to any deduction of an offset claim from a federal payment. 24 C.F.R. § 17.151. The Secretary states that a Notice of Intent to Collect by Treasury Offset ("Offset Notice") was sent to Petitioner on July 25, 2005. (Supplemental Declaration of Gary Sautter ("Sautter Decl."), ¶ 5, dated September 26, 2011.) Since there is no evidence that Petitioner filed an appeal within 65 days of receiving that Notice, the Notice was sufficient to have authorized both the 2009 and 2010 offsets. 24 C.F.R. § 17.159.

That Offset Notice, however, does not relate to the present wage garnishment hearing. This hearing, authorized under 31 U.S.C. § 3720D, is limited to determining the existence, amount, and legal enforceability of an alleged debt, and whether administrative wage garnishment is a valid mechanism to recover said debt. 31 U.S.C. § 3720D; 31 C.F.R. § 285.11(f)(2). Although the administrative offsets and the proposed administrative wage garnishment both seek to secure repayment of the alleged debt, the two mechanisms are wholly independent of each other and are governed by separate regulations. As such, an improper seizure under one mechanism will not invalidate the other. Indeed, the Secretary is expressly authorized to pursue other debt collection remedies "separately or in conjunction with administrative wage garnishment." 31 C.F.R. § 285.11(b)(4). Accordingly, if this Office finds the alleged debt in this case to be past due and legally enforceable, wage garnishment would be an appropriate remedy irrespective of previous offsets.

The Secretary has acknowledged that both offsets occurred, and contends that the funds have been applied to the subject debt. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 5; Sautter Decl., ¶ 7.) Neither party has introduced the Garnishment Notice as documentary evidence, but both confirm that it lists a past-due balance of $1,948.79. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 5; Pet'r's Stat., ¶ 7.) The principal balance identified in the Secretary's Statement, however, is only $857.10, a difference of $1,091.69. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 4.) This supports the Secretary's contention that the $1,114.24 offset from Petitioner's 2010 federal tax return was applied to the principal balance and its associated interest. The Secretary has also offered sworn testimony that the 2010 tax return was credited to Petitioner's debt on June 17, 2011, several weeks after the Garnishment Notice was sent to Petitioner. (Sautter Decl., ¶ 8.). Additionally, evidence from the computerized Debt Collection and Asset Management System shows that Petitioner's 2009 offset of $353.13 was applied to the subject debt in 2010. (Sautter Decl., pp. 1, 9.) Both federal offsets therefore appear to have been properly applied to the repayment of this debt[1]. Accordingly, I find that the debt balance is correctly stated in the Sautter Declaration, and Petitioner remains liable for the amount specified therein.

Finally, Petitioner states that in October of 1996 she filed a Chapter 13 bankruptcy proceeding in which First Texas Bank filed a Creditors Claim. (Pet'r's Stat., ¶ 4.) She does not

[1] Petitioner also objects to the 2010 offset because she and her husband filed a joint tax return. Petitioner's husband is not a party to this proceeding and is not liable for Petitioner's debt. He therefore may be able to reclaim his portion of the 2010 tax return by filing Form 8379 — Injured Spouse Allocation — with the Internal Revenue Service. (Sautter Decl., ¶ 8.)

assert, however, that the debt was discharged as a result of the bankruptcy. Rather, Petitioner states that she was "hoping" to repay her debts and "attempted" to pay them via the Chapter 13 proceeding. (*Id.*, ¶¶ 4, 10.) Petitioner further states that "HUD did not produce any documents showing the disposition of my 1996 bankruptcy." (*Id.* at ¶ 8.)

It is the responsibility of Petitioner, not the Government, to provide the documentary evidence necessary to prove Petitioner's assertions. It is well-settled that assertions without evidence are insufficient to prove that the debt is not past due or not 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)). In the Notice of Docketing, this Office gave Petitioner 45 days to file such evidence. (Notice of Docketing, 2.) Petitioner was allowed additional time to obtain her bankruptcy documents from the U.S. Bankruptcy Court for the Eastern District of Texas.

On October 6, 2011, Petitioner was ordered to file documentary evidence to prove that the bankruptcy proceeding was ongoing or that the subject debt had been discharged via the bankruptcy. (Order, dated October 6, 2011.) Petitioner was given until November 1, 2011, to comply with the Order, and was informed that failure to comply with the Order could result in sanctions being imposed by the Court." (*Id.*) Petitioner failed to comply with the Order.

Absent tangible evidence that Petitioner's Chapter 13 bankruptcy, filed in 1996, resulted in a discharge of the debt in this case, Petitioner cannot show that the alleged debt is inaccurately calculated or legally unenforceable. Accordingly, I find that Petitioner has failed to meet her burden of proof, and that she is liable for the debt in the amount claimed by the Secretary.

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.

H. Alexander Manuel
Administrative Judge

January 3, 2012