



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

In the Matter of:

Kayla Goodin,
Petitioner

HUDOA No. 11-M-CH-AWG46
Claim No. 780693344

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DECISION AND ORDER

On January 18, 2011, Petitioner filed a request for 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 in this case by means of administrative wage garnishment. 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 January 20, 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.

Background

HUD is the holder of a Manufactured Home Retail Installment Contract dated February 23, 2002 (the "Note") signed by Petitioner. (Secretary's Statement ("Sec'y Stat."), dated February 15, 2011, ¶ 2; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated February 4, 2011, ¶ 3, Ex. C.) After default by Petitioner, the Note was assigned to HUD by C U Factory Built Lending, LP, under the regulations governing the Title I insurance program. (Sec'y Stat., ¶ 2; Dillon Decl., ¶ 3, Ex. C.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 4.) 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) \$19,436.40 as the unpaid principal balance as of January 30, 2011;
- (b) \$64.78 as the unpaid interest on the principal balance at 4% per annum through January 30, 2011; and
- (c) interest on said principal balance from February 1, 2011 at 4% per annum until paid.

(Sec'y Stat., ¶ 3; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated October 1, 2010 was sent to Petitioner. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 5.) 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, but has not entered into any such agreement. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 6.)

A Wage Garnishment Order, dated November 2, 2010, was issued to Petitioner's employer. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 7.) Based on the issuance of the garnishment order, Petitioner's pay has been garnished three times in the total amount of \$745.08, and these payments are reflected in the amounts above. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 8.) Petitioner's employer has acknowledged that the garnishment amount was incorrectly calculated at 15% of gross pay and that future garnishment will be calculated at 15% of disposable pay in accordance with the wage garnishment order. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 9, Ex. A.) The difference between the amount garnished, \$745.08, and the amount that should have been garnished, \$653.69, is \$91.39. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 10.) On February 4, 2010, HUD processed a refund in the amount of \$91.39 to Petitioner. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 10.)

Petitioner provided a copy of her pay statement for the two week period ending December 14, 2010, to HUD. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 11, Ex. B.) Based on this pay

statement, the Secretary's proposed repayment schedule is \$215.30 bi-weekly or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 11.)

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, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause a financial hardship. Petitioner disputes the terms of the proposed garnishment. (Petitioner's Request for a Hearing ("Pet'r Hr'g Req."), filed January 18, 2011.) Petitioner attached to her Request for a Hearing a "Financial Statement of Debtor," listing her salary, monthly expenses and assets. (Pet'r Hr'g Req., Attach.) Petitioner, however, has not produced any documentary evidence to prove that the repayment schedule terms are improper, or that the debt is otherwise legally unenforceable. Therefore, Petitioner has not met her burden of proof in this case.

The Secretary, on the other hand, met his burden of proof to show the terms of the repayment schedule by filing his Statement, setting forth documentary evidence in support of his claim against Petitioner for the debt owed to HUD. In his Statement, the Secretary states "that Petitioner's employer has acknowledged that the garnishment amount was incorrectly calculated at 15% of gross pay and that future garnishments will be calculated at 15% of disposable pay in accordance with the wage garnishment order." (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 9, Ex. A.) Exhibit A is an email from Petitioner's employer stating that it "has made changes to [Petitioner]'s garnishment to 15% of her disposable earnings." (Dillon Decl., Ex. A.) The Secretary also attached Mr. Dillon's signed affidavit stating that "[t]he difference between the amount garnished, \$745.08[,] and the amount that should have been garnished[,] \$653.69[,] is \$91.39," and that "[o]n February 4, 2010, HUD processed a refund in the amount of \$91.39 to the Petitioner." (Dillon Decl., ¶ 10.)

Unlike the Secretary, Petitioner has not met her burden of proof, by a preponderance of the 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 by operation of law pursuant to 31 C.F.R. § 285.11(f)(8)(ii). This Office has previously held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or unenforceable." *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996).) Therefore, Petitioner's claim fails for lack of proof.

Finally, a finding against Petitioner is justified on the basis of her noncompliance with the Orders issued by this Office. This Office ordered Petitioner to file documentary evidence to prove that all or part of the alleged debt to HUD in this case is unenforceable or not past due, that repayment of the debt would cause her financial hardship, or that collection of the debt may not be pursued due to operation of law. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated January 20, 2011.) A second Order was issued ordering Petitioner to file documentary evidence as sought in the Notice of Docketing, "on or before March 25, 2011." (Order, dated March 10, 2011.) This Order stated that "[f]ailure to comply with this Order may

result in a decision based on the documents in the record of this proceeding.” (emphasis in original). (*Id.*) Petitioner failed to comply with both Orders.

Therefore, I find that sanctions pursuant to 24 C.F.R. § 26.4 are justified. 24 C.F.R. § 26.4(a) states that “[t]he hearing officer may sanction a person, including any party or representative for failing to comply with an order...; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.” 24 C.F.R. § 26.4(a) (2010). Pursuant to 24 C.F.R. § 26.4(c), which sets forth the specific sanctions that may be imposed, including “any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party...” (24 C.F.R. § 26.4(a)), I find that a determination against Petitioner is appropriate. Accordingly, I find that Petitioner has not met her burden of proof, and that the debt in this case is past due and enforceable in the amount alleged by the Secretary.

ORDER

For the reasons stated above, it is

ORDERED that the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment, entered on January 20, 2011, is **VACATED**. It is

FURTHER ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at the maximum rate authorized by law.



H. Alexander Manuel
Administrative Judge

May 18, 2011