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

In the Matter of:

Catheryn Townsend,

Petitioner

HUDOA No. 11-M-NY-AWG130
Claim No. 72-100542-6

Catheryn Townsend
6705 Capouano Drive
Montgomery, AL 36116

Pro Se

Julia M. Murray, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
for New York/New Jersey Field Offices
26 Federal Plaza, Room 3237
New York, NY 10278-0068

Counsel for the Secretary

DECISION AND ORDER

On August 17, 2011, Petitioner filed a request for a hearing concerning an 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 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 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)(10)(ii), HUD must suspend any active wage withholding order beginning on the 61st day after receipt of the Hearing Request and continuing until the issuance of this written decision.

Background

On or about January 7, 2000, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note" or "Subordinate Note") in the amount of $8,850.05, in exchange for foreclosure relief. (Secretary's Statement ("Sec'y Stat."), filed September 13, 2011, ¶ 4; Ex. A, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated August 26, 2011, ¶ 4.) The Note cited specific events that would make the debt immediately due and payable, one of which being the payment in full of the primary note. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 4; Ex. B, Note, ¶ 3(A)(I).) On or about September 15, 2006, the FHA insurance on Petitioner's primary note was terminated, as the lender notified the Secretary that the mortgage had been paid in full. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 4.) The Subordinate Note thus became due and payable on that date. (Note at ¶ 3(A)(I), (III).)

The Note instructed Petitioner to make payment to HUD at: "the Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street SW, Washington, DC 20410 or any such other place as Lender may designate in writing by notice to Borrower." (Sec'y Stat., ¶ 7; Note, ¶ 4(B).) Petitioner did not make payment at the place and in the amount identified in the Note. (Sec'y Stat., ¶ 8.)

The Secretary's attempts to collect the alleged debt have been unsuccessful. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 5.) The Secretary contends that Petitioner is indebted to HUD in the following amounts:

(a) $2,416.94 as the unpaid principal balance as of August 25, 2011;
(b) $0.00 as the unpaid interest on the principal balance at 5% per annum through August 25, 2011 until paid; and
(c) interest on said principal balance from August 26, 2011 at 5% per annum until paid.

(Sec'y Stat., ¶ 9; Dillon Decl., ¶ 5.)

The Secretary sent a Notice of Intent to Initiate Wage Garnishment Proceedings ("Notice") to Petitioner on May 7, 2010. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 6.) 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. (Sec'y Stat., ¶ 11; Dillon Decl., ¶ 7.) To date, Petitioner has not entered into such an agreement.

A Wage Garnishment Order, dated June 7, 2010, was issued to Petitioner's employer by the U.S. Department of Treasury's Financial Management Service. (Sec'y Stat., ¶ 12; Dillon Decl., ¶ 8.) As of September 13, 2011, 26 garnishment payments totaling $9,846.98 have been received and credited toward Petitioner's debt. (Sec'y Stat., ¶ 13; Dillon Decl., ¶ 9.)

Based on the current bi-weekly garnishment rate of $378.73, the Secretary proposes a bi-weekly repayment schedule of $378.73, or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 14; Dillon Decl., ¶¶ 10-11.)

Discussion

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 any proposed repayment schedule are unlawful, would cause undue financial hardship to Petitioner, 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 Subordinate Note and the sworn testimony of the Director of HUD's Asset Recovery Division. The Note states the loan amount as $8,850.05, and appears to be dated, notarized, and signed by Petitioner. I find that the Secretary has therefore met his initial burden of proof.

Petitioner contends that she received no notice of an impending wage garnishment. (Petitioner's Statement of Unknown Debt ("Pet'r's Stat."), ¶ 1, filed September 30, 2011.) Specifically, Petitioner states she was unaware of the debt until a Wage Garnishment Order was received by her employer on June 7, 2010.

Pursuant to 31 C.F.R. § 285.11(e), a written notice must be mailed by first class mail to a debtor's last known address at least 30 days before initiating a wage garnishment action. The Secretary asserts that Petitioner was sent a Notice on May 7, 2010. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 6.)

Petitioner's claim that she never received the Notice is undermined by the fact that she includes the Notice among the documents filed with her initial Hearing Request. (*See* Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed August 17, 2011, p. 3.) The Notice, sent by the private collection company Linebarger Goggan Blair & Sampson, LLP, fully complies with the notice requirements of 31 C.F.R. § 285.11(e). Moreover, the Notice is addressed to 6705 Capouano Drive, Montgomery, AL 36116; the address where Petitioner has maintained her primary residence since at least 2000. It is well-settled that a properly and reasonably addressed Notice is effective on the date it was sent, not on the date it was received. *See Joy A. Forbes*, HUDBCA No. 93-C-NY-R906 (December 20, 1993); *Kenneth Holden*, HUDBCA 89-3781-K293 (June 6, 1989); *Craig and Ruth Horton*, HUDBCA No. 88-3071-H532 (March 24, 1988).

Additionally, Petitioner states in her Hearing Request that she contacted Linebarger and was instructed by them to send the Hearing Request directly to HUD. (Pet'r's Hr'g Req., p. 2.) Petitioner would not have known to contact Linebarger had she not received the Notice. Accordingly, I find that Petitioner was properly notified of the impending wage garnishment action.

Petitioner also disputes the existence of the debt that is the subject of this case, claiming she has "no knowledge of signing this note." () While Petitioner admits that the Note bears her true signature, she contends that this signature "was attached to an application for the payment to

be made," and that she never signed the actual Note. (Pet'r's Stat., ¶ 2.) Petitioner, in effect, alleges that HUD fraudulently affixed Petitioner's loan application signature page to a Promissory Note, and now seeks to hold Petitioner liable for the amount stated on said Note. (Pet'r's Stat.)

Petitioner also argues that the contested document could not be a Promissory Note because it does not outline the terms or amount of the loan, state the loan's payment date, or state the date of the agreement. (*Id.* ¶ 7.) Finally, Petitioner states that she would not have signed a Promissory Note for $8,850.05 because, at the time of the default, she had missed only three mortgage payments of $623.59 each. (*Id.* ¶¶ 2, 5.)

In response, the Secretary states that the language immediately preceding Petitioner's signature on the contested document references a Note, not an application for a loan. (Supplemental Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable (Sec'y Supp. Stat."), filed November 28, 2011, ¶ 5.) The Secretary further contends that Petitioner's claim that she was less than $2,000 in arrears at the time of the default is unsupported by evidence in the record.

Upon examination of the Note, I find that the signature page refers to the actual Note, not an application. The sentence immediately preceding Petitioner's signature reads; "BY SIGNING BELOW, borrower accepts and agrees to the terms and covenants contained in this Note." (Sec'y Stat.; Ex. B, p. 3.) (emphasis in original). The sentence and the signature appear on the same page, and so could only have come from the same document. Petitioner's signature thus secures her obligation to comply with the identified terms. A mere application would not contain binding language of the sort that appears on the signature page. Petitioner's argument that the signature page was grafted onto a different document is therefore contradicted by the text of the page itself.

Importantly, Petitioner states that she was told that "if she were approved she would be signing another document" after sending in the application. (Pet'r's Supp. Stat., ¶ 4.) If this were the case, there would be no need for the application to contain language accepting and agreeing to any terms, as any kind of final acceptance would occur in the follow-up document. The fact that the sentence preceding the signature also includes the words "contained in this Note" further confirms that the document that Petitioner signed was the Promissory Note itself.

Petitioner's assertion that the Note omits necessary information is incorrect. The first two pages of the Note specifically describe the amount of the loan, the date of the agreement, and the terms. The Note also describes in detail the circumstances upon which the debt becomes due and payable.

Petitioner's final argument in this vein — that she owed considerably less than the amount of the loan — is not supported by the evidence in the record. Petitioner's evidence includes a mortgage case status sheet showing that her April 2000 mortgage payment was one month past due. (Pet'r's Stat.; Ex. B.) However, the sheet is only current through May 4, 2000. It does not show the amount of Petitioner's actual mortgage payment or the status of her mortgage in September 2000. The evidence therefore fails to substantiate Petitioner's claim that

she owed less than $2,000 in arrearages at the time of the default. I find that Petitioner signed the Note and, accordingly, is obligated to repay the debt.

As a final argument, Petitioner states that "all existing liens," including the Subordinate Note, were repaid after she refinanced her mortgage in September 2006. (Pet'r's Ltr., ¶ 6.) The Secretary contends that Petitioner was informed in October 2006 that the debt was still due and owing, and that Petitioner acknowledged the continued existence of the debt at that time. (Sec'y Supp. Stat., ¶¶ 9-12.) As support, the Secretary has included a copy of an October 2006 demand letter mailed to Petitioner's 6705 Capouano Drive address, as well as notes from the loan servicer summarizing a conversation with Petitioner regarding the debt. (*Id.*; Ex. A; Ex. B.)

The demand letter, mailed October 11, 2006, from the Morris-Griffin Corporation, recounts the payment terms of the Note and provides a customer service number for Petitioner to call to discuss the loan. (Sec'y Supp. Stat.; Ex. A.) According to the notes provided from the same company, Petitioner called the number on October 16, 2006. The notes state that Petitioner "[c]annot put 1/3 down, but will send in payments as she can." (Sec'y Supp. Stat.; Ex. B.) This evidence supports the Secretary's assertion that Petitioner had actual knowledge of the continued existence of the subject debt in 2006. Petitioner, meanwhile, has provided no evidence proving that the debt was repaid as part of her refinance. I therefore conclude that the alleged debt remained active and unpaid after the refinance. As such, Petitioner remains obligated to repay the debt.

ORDER

For the reasons set forth above, 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 to the extent authorized by law.

H. Alexander Manuel
Administrative Judge

January 11, 2012