



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

In the Matter of:

Anissa F. Brown,
Petitioner

HUDOA No. 11-M-NY-AWG39
Claim No. 5495896 LL 9244

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Pro se

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For the Secretary

DECISION AND ORDER

On December 22, 2010, Petitioner filed a hearing request concerning a proposed administrative wage garnishment action by the U.S. Department of Housing and Urban Development ("HUD") to collect on alleged debt against Petitioner. 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 alleged debt in contested administrative wage garnishment proceedings is enforceable against the 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 and by 24 C.F.R. Part 26, Subpart A. 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 December 29, 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 December 29, 2010.)

Background

On January 22, 1992, Petitioner executed and delivered to Canon Mobile Homes, Inc. a Retail Installment Contract (“Note”) in the amount of \$15,053.33, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Secretary’s Statement (“Sec’y Stat.”), dated January 28, 2011, ¶ 2, Ex. A.) Contemporaneously, the Note was assigned by Canon Mobile Homes, Inc. to Logan-Laws Financial Corporation (“Logan-Laws”). (*Id.* at ¶ 3, Ex. A, pp. 1-2.) Logan Laws was defaulted as an issuer of Mortgage Backed Securities (“MBS”) due to its failure to comply with the Government National Mortgage Association’s (“GNMA’s”) MBS program requirements. (*Id.* at ¶ 4; Ex. B, Declaration of Christopher C. Haspel, Director, MBS Monitoring Division of the GNMA, HUD (“Haspel Decl.”), dated January 26, 2011, ¶ 4.) Upon default by Logan-Laws, all of its rights, title, and interest in Petitioner’s loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between First Beneficial and GNMA. (Sec’y Stat., ¶ 5; Haspel Decl., ¶ 4.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec’y Stat., ¶ 6; Haspel Decl., ¶ 5.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec’y Stat., ¶ 7; Haspel Decl., ¶ 6.) 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) \$4,588.06 as the unpaid principal balance;
- (b) \$598.88 as the unpaid interest on the principal balance at 13.00% per annum through January 14, 2011, and
- (c) interest on said principal balance from January 15, 2011 until paid.

(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 December 10, 2010 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 with HUD, but, to date, Petitioner has not entered into a written repayment agreement. (Sec’y Stat., ¶ 9; Haspel Decl., ¶ 7.) The Secretary’s proposed repayment schedule is 10% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 12; Haspel Decl., ¶ 8.)

Discussion

Petitioner disputes her liability for the debt in this case. (Petitioner's Request for a Hearing ("Pet'r Hr'g Req."), filed December 22, 2010.) Petitioner states that, pursuant to the terms of her attached divorce decree, her former husband retained all responsibility for paying the alleged debt to HUD in this case. (*Id.*) 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 financial hardship.

As one of the signatories on the Note, however, Petitioner is jointly and severally liable along with the other signatory for repayment of the alleged debt. "Liability is characterized as joint and several when creditors may sue the parties to an obligation separately or together." *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005) (citing *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314 (July 15, 1987)).

Moreover, even if the terms of a court order allocate half of the responsibility for the alleged indebtedness to Petitioner's ex-husband, "Petitioner remains liable to HUD for payment of the Note pursuant to the terms of the Note and existing law." *Terri Kutz*, HUDOA No. 09-M-NY-KK08 (March 20, 2008). The terms of the divorce only determine the rights and liabilities between Petitioner and her ex-husband, and do not bind their creditors. *See Pee Dee State Bank v. Prosser*, 367 S.E.2d 708, 712 (S.C. App. 1988) (overruled in part on other grounds); *Kimberly S. King (Theide)*, HUDBCA No. 89-4587-L74 (April 23, 1990); *see also Cynthia Abernethy*, HUDBCA No. 04-D-NY-AWG39 (March 23, 2005). The Secretary may proceed against any signatory for the full amount of the debt. *Terri Kutz*, HUDOA No. 09-M-NY-KK08 (March 20, 2008.) Although Petitioner may be able to seek indemnification from other signatories on the Note, this does not prevent HUD from seeking payment solely against Petitioner. *Id.* Therefore, I find that Petitioner is jointly and severally liable to HUD for the full amount of the alleged debt.

Additionally, Petitioner was specifically ordered by this Court to file documentary evidence to prove that all or part of the alleged debt to HUD in this case is either unenforceable or not past due: first, in the Notice of Docketing and, subsequently, in the Order dated February 23, 2011 ("Order"). The 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). (Order.)

Petitioner has failed to comply with the Orders issued by this Office to submit any evidence that the alleged debt is unenforceable or not past due. 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-T300, (July 3, 1996)). Since Petitioner does not offer any evidence that would prove that the debt is unenforceable, I find that Petitioner's argument fails for want of proof.

Furthermore, in light of Petitioner's failure to comply with the Order, 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). Therefore, 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

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

March 29, 2011