



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

In the Matter of:

Gloria Jackson,
Petitioner

HUDOA No. 11-M-NY-AWG51
Claim No. 721006438

Gloria Jackson
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Pro se

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DECISION AND ORDER

On February 14, 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 are designated to determine whether the HUD Secretary may collect the alleged debt by means of administrative wage garnishment if 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 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 February 17, 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”), dated February 17, 2011.)

Background

On or about March 4, 2005, Petitioner executed and delivered a Subordinate Note (“Note”) in the amount of \$8,480.58 in favor of the Secretary in exchange for foreclosure relief. (Secretary’s Statement (“Sec’y Stat.”), filed March 8, 2011, ¶ 4; Ex. A: Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated March 4, 2011, ¶ 4.) The Note cited specific events that would make the debt due and payable, one of which is the payment in full of the primary note. (Sec’y Stat., ¶ 5; Dillon Decl., ¶ 4.) On or about October 1, 2008, the FHA insurance on the primary note was terminated when the lender notified the Secretary that the note was paid in full. (Sec’y Stat., ¶ 6; Dillon Decl., ¶ 4.) The Subordinate Note thus became due and payable on that date.

The Note instructed Petitioner to make payment to HUD at: “the U.S. Department of HUD, c/o Morris-Griffin/First Madison, 4111 S. Darlington, Suite 300, Tulsa, OK, 06484 or any such other place as Lender may designate in writing by notice to Borrower.” (Sec’y Stat., ¶ 7; Ex. B: Note, ¶ 4(B).) Petitioner did not make payment at the place and in the amount identified in the Note. (Sec’y Stat., ¶ 8.)

HUD has attempted to collect on the Note, but Petitioner remains delinquent. (Sec’y Stat., ¶ 9; Dillon Decl., ¶ 5.) The Secretary contends that Petitioner is indebted to HUD in the following amounts:

- (a) \$8,480.58 as the unpaid principal balance as of February 28, 2011;
- (b) \$318.00 as the unpaid interest on the principal balance at 3% per annum through February 28, 2011 until paid; and
- (c) interest on said principal balance from March 1, 2011 at 3% per annum until paid.

(*Id.*)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Wage Garnishment Proceedings, dated January 12, 2011, was sent to Petitioner. (Sec’y Stat., ¶ 10; Dillon Decl., ¶ 6.) In accordance with 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.) Petitioner has not entered into such an agreement. (*Id.*)

The Secretary has been unable to obtain a copy of Petitioner’s current pay statement, and so proposes a repayment schedule of either \$245.00 per month or 15% of Petitioner’s disposable income. (Sec’y Stat., ¶ 13; Dillon Decl., ¶ 9.)

Discussion

Petitioner disputes the existence of this debt, stating that her Bank of America Borrower's Protection Plan ("BPP") paid her mortgage on her behalf between May, 2009 and May, 2010, while Petitioner was unemployed. (Pet'r's Hr'g Req., p. 3-4.) Petitioner also argues that any garnishment of her wages will cause a financial hardship for her and her family. Petitioner bears the burden of proving these claims by a preponderance of the evidence. 31 C.F.R. § 285.11(f)(8)(ii).

First, Petitioner contends that she is not responsible for any debts incurred during the period in which the BPP was in effect. (Pet'r's Hr'g Req., p. 1-2.) To support this statement, Petitioner offers as evidence a letter from Bank of America's Benefit Request Team authorizing a BPP payment of \$975.80 to cover Petitioner's loan payment for the claim period of May 15, 2009 to July 1, 2009. (*Id.* at p. 6, ("Bank of America Letter.")) Under the payment plan, Bank of America pays the homeowner's mortgage each month the homeowner is verifiably unemployed, up to 12 months. (*Id.* at p. 3-4, 5.)

The Secretary argues that even if the BPP paid Petitioner's mortgage, it would not cover the Subordinate Note. (Dillon Decl., ¶ 8.) The Secretary is correct. The debt at issue in this case — derived from the Subordinate Note — exists independent of the primary mortgage. The Bank of America Letter speaks repeatedly of "your loan" in the singular form, identifying the loan as Loan Number: 000000006989730905A2. (Bank of America Letter.) The loan number for the Subordinate Note is 0029646478. (Sec'y Stat., Ex. B, p. 1.) The BPP payments thus relate only to the primary mortgage, and therefore have no effect on the alleged debt.

The Bank of America letter also informed Petitioner that she was "responsible for making any portion of your loan payment required for escrow, taxes, insurance or other optional products," and specifically stated that Petitioner was "responsible for \$326.71 of the loan payment due 07/01/09." (Pet'r's Hr'g Req., p. 6.) Petitioner was thus actually aware that certain payment obligations continued to exist despite the BPP.

Moreover, whether or not Bank of America was obligated to pay any or all of the debt on the Subordinate Note, there is no evidence that such payments were ever made. Apart from whether Petitioner may have a claim against Bank of America for failure to pay the Subordinate Note debt, Petitioner remains liable to HUD on the Subordinate Note because HUD did not receive any funds from Petitioner and did not release Petitioner from her payment obligation.

For Petitioner not to be held liable for the subject debt, she must submit 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); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

In the instant case, Petitioner has failed to produce evidence of a written release from her obligation to pay the alleged debt or evidence of valuable consideration paid to HUD in satisfaction of the debt, thus rendering the alleged debt unenforceable. I therefore find that Petitioner remains fully responsible for this debt and that the debt is past due and legally enforceable.

Petitioner further states that she is “having an hardship [sic] in paying the balance.” (Petitioner Letter, filed June 6, 2011.) In the Notice of Docketing, this Court ordered Petitioner to file documentary evidence proving that repayment of the alleged debt in this case would cause financial hardship. (Notice of Docketing, p. 2.) The Notice stated that evidence must include proof of payment of household expenses and not a mere listing of expenses. (*Id.*) Acceptable documentary evidence includes:

- cancelled checks, receipts, or bills showing a record of payment;
- copies of Petitioner’s pay statements for the past 12 months;
- copies of bills such as utilities, mortgage payments, automobile expenses, payment of medical bills, and other documents showing payment of household expenses;
- copies of payments made on credit card debt or other consumer loans for essential household expenses;

(*Id.*)

Petitioner has filed none of these documents and has provided no documentary evidence to support her claim of financial hardship. This Office has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and/or unenforceable.” *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Without evidence that repayment of this loan will create a financial hardship for Petitioner, Petitioner’s argument must fail for lack of proof.

Petitioner also asserts that she has been “unemployed for over a year.” (Pet’r Letter.) The Secretary is prohibited from initiating a wage garnishment procedure against a debtor if the debtor was involuntarily separated from employment and has been reemployed for less than 12 months. 31 C.F.R. § 285.11(j). It is the responsibility of the debtor to inform HUD of the circumstances surrounding an involuntary unemployment. (*Id.*)

To determine the nature and extent of Petitioner’s unemployment, this Court ordered Petitioner to file “a letter, affidavit, or other proof of the dates of her recent unemployment period(s), together with proof that she was involuntarily separated from her previous employment.” (Order, dated June 9, 2011.) The Order also instructed the Secretary to certify that imposition of the garnishment order would not violate HUD regulations. (*Id.*) Petitioner did not respond to the June 9, 2011 Order. As a result, the Court is unable to confirm that Petitioner was involuntarily separated from her employment.

Additionally, Petitioner acknowledges that she is, in fact, not unemployed, but works part time. (Pet'r Letter.) After contacting Petitioner's employer, HUD was informed that Petitioner has worked continuously on a part-time basis since 2004. Although Petitioner draws a distinction between full-time and part-time employment, 31 C.F.R. § 285.11 does not. *See* 31 C.F.R. § 285.11(c) (defining the term "employer," as "a person or entity that employs the services of others and that pays their wages or salaries."). Accordingly, I find that Petitioner, having been continuously employed part-time, has not been "separated from employment" and, further, has not shown that any separation was involuntary. Petitioner is therefore not exempt from the wage garnishment provisions of 31 C.F.R. § 285.11 and remains liable for the alleged debt.

ORDER

For the reasons set forth above, this Office finds the debt that is the subject of this proceeding to be past due and enforceable in the amount alleged by the Secretary.

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 in the amount of \$245.00 per month or 15% of Petitioner's disposable income per pay period.



H. Alexander Manuel
Administrative Judge

September 15, 2011