



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

In the Matter of:

Cinnamon Emmert-Watts,
Petitioner

HUDOA No. 11-M-NY-AWG85
Claim No. 721005035

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Pro Se

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DECISION AND ORDER

On April 13, 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 have been designated to determine whether the HUD Secretary ("Secretary") may collect the alleged debt by means of administrative wage garnishment if a debt is contested by 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. 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).

Pursuant to 31 C.F.R. § 285.11(f)(4) and (f)(10), on April 13, 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

On July 7, 2006, Petitioner executed a Partial Claims Promissory Note (“Subordinate Note” or “Note”) in the amount of \$5,724.99 in favor of the Secretary. (Secretary’s Statement (“Sec’y Stat.”), dated April 27, 2011, ¶ 4; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated April 27, 2011, ¶ 4, Ex. B.)

The Note cited specific events that would cause the debt to become immediately due and payable. (Sec’y Stat., ¶ 5; Dillon Decl., ¶ 4; Ex. B, p. 1) One of those events was the payment in full of the Primary Note (Sec’y Stat., ¶ 5.)

On or about April 7, 2007, the FHA insurance on Petitioner’s Primary Note was terminated when the lender notified the Secretary that the Primary Note was paid in full. (*Id.*, at ¶ 6; Dillon Decl., ¶ 4.) Upon termination of the Primary Note, Petitioner was obligated to make payment to HUD on the Subordinate Note in the manner specified in the Note.¹ (Sec’y Stat., ¶ 7.) Petitioner failed to make the payment at the place and in the amount specified. (*Id.*)

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 therefore asserts that Petitioner is indebted to the Department in the following amounts:

- (a) \$5,724.99 as the unpaid principal balance as of March 31, 2011;
- (b) \$858.60 as the unpaid interest on the principal balance at 4% per annum through March 31, 2011; and
- (c) interest on said principal balance from April 1, 2011 at 4% per annum until paid.

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

On February 17, 2011, Petitioner was sent a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings. (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 with HUD under mutually agreeable terms. (Sec’y Stat., ¶ 11; Dillon Decl., ¶ 7-8.)

The Secretary has proposed a repayment schedule of \$183.00 per month or 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 17; Dillon Decl. ¶ 9.)

¹ The Note stated that “Payment shall be made at the following address: U.S. Department of HUD, c/o First Madison Services, Inc., 4111 South Darlington, Suite 300, Tulsa, OK 74135 or any such other place as lender may designate in writing by notice to Borrower. (Sec’y Stat., Ex. B, p. 1.)

Discussion

On April 13, 2011, this Court ordered Petitioner, to file, on or before May 31, 2011, documentary evidence proving that all or part of the alleged debt in this case was not past due or not legally enforceable. (Notice of Docketing, dated April 13, 2011.) After failing to receive the documentation, the Court extended the deadline to July 1, 2011. (Order dated June 9, 2011 (“June 9 Order”),.) Petitioner failed to comply with this Order, as well. On August 11, 2011, Petitioner was again ordered to file her documentary evidence on or before August 26, 2011. (Order dated August 11, 2011 (“August 11 Order”),.)

On August 15, 2011, the Secretary filed a supplemental brief stating that Petitioner no longer challenged the legal enforceability of the debt and had agreed to the Secretary’s proposed wage garnishment rate of \$183.00 per month. (Supplemental to Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable and Secretary’s Proposed Repayment Schedule (“Sec’y Suppl.”), ¶¶ 2-3, dated August 15, 2011.) As evidence of the agreement, the supplemental brief included a letter, signed by Petitioner, that stated: “I agree to pay \$183.00 per month via wage garnishment until my debt is paid in full.” (Sec’y Suppl., Ex. B.) (“Petitioner’s Acknowledgment”).

Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner has the right to enter into a written repayment agreement with HUD under terms agreeable to HUD. The supplemental brief and its attached exhibits demonstrate that Petitioner has agreed to the Secretary’s proposed repayment terms. Petitioner has not come forward with evidence opposing the Secretary’s documentary evidence that Petitioner is indebted to HUD in the amount set forth by the Secretary. For this reason, and on the strength of Petitioner’s tacit admission and ratification demonstrating that the debt is owed, as evidenced by Petitioner’s Acknowledgment, I find that Petitioner is liable to the Department in the amounts set forth by the Secretary in this case.

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**. For the reasons stated above, 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 \$183.00 per month, as agreed upon in the Secretary’s repayment plan. It is

FURTHER ORDERED that, in the event that Petitioner fails to make payment according to the terms of the Secretary’s repayment plan, the Secretary shall be entitled to re-file this case and to seek administrative garnishment of Petitioner’s wages up to the maximum extent allowed by law.



H. Alexander Manuel
Administrative Judge

August 18, 2011