

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

**Jeanette Cooks**

Petitioner.

Case No: 12-M-CH-AWG35

Claim No: 780734288

Order Date: April 9, 2012

**DECISION AND ORDER**

On January 3, 2012, 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 an 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. 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(j) wages of a debtor are excluded from garnishment when the debtor "has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months." However, a debtor has the burden of informing the agency "of the circumstances surrounding an involuntary separation from employment." *Id.*

Pursuant to 31 C.F.R. § 285.11(f)(4) 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 dated January 5, 2012.)

**Background**

Petitioner executed and delivered a Retail Installment Contract- Security Agreement ("the Note"), dated January 3, 2008, to 21<sup>st</sup> Mortgage Corporation, in the amount of \$29,551.00, for a Manufactured Home loan that was insured against nonpayment by the Secretary pursuant to Title

I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement, "Sec'y Stat.," ¶ 1; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated January 17, 2012, ¶ 3.) After default by Petitioner, 21 st Mortgage Corporation, and then, Vanderbilt Mortgage and Finance, Inc., the Note was assigned to the Secretary under the regulations governing Title I insurance Program (Assignment of Contract attached as part of Exhibit A). The Secretary is the holder of the Note. (Sec'y Stat. ¶ 1, ¶2; Dillon Decl. ¶ 3.)

HUD has attempted to collect the amounts due under the Note but Petitioner remains in default. (Sec'y Stat., ¶ 3; Dillon Decl. ¶ 4.) The Petitioner is indebted to HUD on the Note in the following amounts:

- a) \$13,568.15 as the unpaid principal as of December 31, 2011;
- b) \$606.53 as the unpaid interest on the principal balance at 1% per annum through December 31, 2011;
- c) \$883.10 as the unpaid penalties and administrative costs as of December 31, 2011; and
- d) Interest on said principal balance from January 1, 2012, at 1% per annum until paid.

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

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated December 1, 2011, was mailed to Petitioner. (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 5.) Petitioner was offered the opportunity to enter into a repayment agreement with HUD under mutually agreeable terms. Petitioner has not entered into a written repayment agreement with HUD.

The Secretary's proposed repayment schedule remains at \$99.51 biweekly or 15% of Petitioner's disposable pay. (Dillon Decl., ¶ 7.)

### Discussion

Petitioner challenges collection of the debt on the grounds that she owes only part of the alleged debt. She further states that her wages are excluded from garnishment because Petitioner has been re-employed for less than 12 months. Thus, an administrative wage garnishment in the amount requested by the Secretary is unlawful at this time. (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed January 3, 2012.) Petitioner bears the burden of proving by a preponderance of the evidence that she was involuntarily separated from her previous employment. 24 C.F.R. § 285.11(j).

Specifically, Petitioner states: "I'm not responsible for the full amount." (Pet'r Hr'g Req.) 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)). In this case, the Note, signed by both Petitioner and the other borrower, specifically states, "I promise to pay you the unpaid balance shown with interest...until the debt is fully paid." As such, "I" refers to "all persons or any person who signed the agreement and they are jointly and severally obligated - that is, each such person is equally responsible just as if that person were the only one to sign the agreement." (emphasis added) (Sec'y Stat., ¶ 6, Exhibit A).

Moreover, even if the terms of a court order allocate half of the responsibility for the alleged indebtedness to Petitioner, "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). This Office has held in analogous circumstances that "the terms of a *divorce* only determine the rights and liabilities between Petitioner and the other spouse, and do not bind their creditors." *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). Therefore, 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.*

Second, Petitioner states: "I've only been employed for seven (7) months to garnish wages." [sic] (Pet'r Hr'g Req.) Pursuant to 31 C.F.R. § 285.11(j) "the agency may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months." The debtor has the burden of informing the agency of the circumstances surrounding an involuntarily separation from employment. Here, Petitioner submitted evidence by way of employee pay history which indicated that Petitioner was hired on May 27, 2011, which is less than twelve months from the institution of these garnishment proceedings. Additionally, HUD approved a refund in the amount of \$203.31 for the administrative wage garnishment payments that have been deducted from Petitioner's paycheck and has not otherwise attempted to refute Petitioner's claim that she has not been re-employed for the requisite 12 month period. Upon consideration, this Office finds Petitioner's evidence credible and sufficient to warrant dismissal of this administrative wage garnishment proceeding. However, the agency may proceed with an administrative wage garnishment proceeding in the future when and if the allotted time under the regulation has elapsed.

Third, Petitioner states that: "the mortgage company didn't provide any possible solution to help me save the property... I wasn't offered any options...I strongly feel due to the Bank's resistance to finding the best possible solution for me, the only option at that time was to vacate the property." (Pet'r Hr'g Req.) By way of dicta, this court states that Petitioner's contention appears to be without merit because the regulation does not place any responsibility on creditors, banks or an agency to assist debtors with their obligations before proceeding with an administrative wage garnishment from a debtor's disposable pay. Nowhere in the Note is there a fiduciary obligation by the mortgage company to offer options or a solution to the debtor for repayment and default remediation.

In wage garnishment proceedings, the Secretary is authorized to garnish up to 15% of a debtor's disposable pay, which is calculated by deducting health insurance premiums and any amount required by law to be withheld from the debtor's gross pay, including salary and bonuses. 31 C.F.R. § 285.11(i)(2)(i), (c). Petitioner indicated that: "due to my financial hardship, I am willing to make payment arrangement on the partial debt. I can only agree to \$25.00 per month on the partial amount." (Pet'r Hr'g Req.) This Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Petitioner may wish to discuss this matter with counsel for the Secretary or Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

**ORDER**

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 this case is **DISMISSED**, *sua sponte* and without prejudice.

It is **FURTHER ORDERED** that the Secretary may not seek to garnish Petitioner's wages unless and until a new Notice of Intent to Initiate Administrative Wage Garnishment Proceedings is sent to Petitioner in accordance with 31 C.F.R. § 285.11(j), and the provisions of 31 C.F.R. § 285.11, *et seq.*, are otherwise complied with.

April 9, 2012



---

H. Alexander Manuel  
Administrative Judge