

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

In the Matter of:	:	CORRECTED COPY
	:	
	:	HUDOA No.: 12-M-CH-AWG46
	:	
PATRICIA GODINA,	:	Claim No.: <u>721007047-0B</u>
	:	
Petitioner	:	May 31, 2012
	:	

DECISION AND ORDER

On February 6, 2012, Petitioner requested a hearing to contest a proposed administrative wage garnishment related to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). The Debt Collection Improvement Act of 1996 authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of nontax debts owed to the United States government. 31 U.S.C. § 3720D.

The HUD Secretary has designated the administrative judges of this Office to conduct hearings to determine whether disputed debts are past due and legally enforceable. The hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

The Secretary has the initial burden of proving the existence and amount of the alleged 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 proposed repayment schedule are unlawful, would cause a 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)(5), on February 7, 2012, 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"), issued February 7, 2012.)

Background

On March 30, 2006, Petitioner and her mother executed and delivered to the Secretary a Partial Claims Promissory Note ("Note" or "Subordinate Note") in the amount of \$5,104.85. (Secretary's Statement ("Sec'y Stat.") ¶ 1, filed March 5, 2012; Ex. A, Note.) In exchange, HUD advanced funds to Petitioner's lender to bring the primary home mortgage current on Petitioner's mother's home, thereby avoiding foreclosure. (Sec'y Stat., ¶ 1; Ex. B, Declaration

of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), ¶ 4.)

The Subordinate Note described specific events that would cause the debt to become immediately due and payable. One of these events is the payment in full of the primary mortgage. (Sec’y Stat., ¶ 2; Note, ¶ 3(A)(i); Dillon Decl., ¶ 4)

On or about February 24, 2011, HUD terminated the FHA insurance on the primary mortgage because the primary lender notified the Secretary that the mortgage had been paid in full. (Sec’y Stat., ¶ 2; Dillon Decl., ¶ 4.) The Note thus became due and payable on that date. The Secretary alleges that Petitioner failed to make payment at the place and in the amount specified in the Note. As a result, the Secretary contends that Petitioner is indebted to HUD in the following amounts:

- (a) \$5,104.85 as the unpaid principal balance as of January 31, 2012;
- (b) \$42.50 as the unpaid interest on the principal balance at 1% per annum through January 31, 2012;
- (c) \$198.74 as the unpaid penalties and administrative costs through January 31, 2012; and
- (d) interest on said principal balance from February 1, 2012 at 1% per annum until paid.

(Sec’y Stat., ¶ 3; Dillon Decl., ¶ 5.)

On December 9, 2011, HUD sent a Notice of Intent to Initiate Wage Garnishment Proceedings (“Notice of Intent”) to Petitioner. (Sec’y Stat. ¶ 4; Dillon Decl., ¶ 6.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Notice of Intent afforded Petitioner the opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec’y Stat., ¶ 4; Dillon Decl., ¶ 7.) To date, Petitioner has not entered into such an agreement. (Sec’y Stat., ¶ 4; Dillon Decl., ¶ 8.)

The Secretary states that HUD’s attempts to obtain Petitioner’s current pay statement have been unsuccessful. (Sec’y Stat., ¶ 4; Dillon Decl., ¶ 7.) Accordingly, the Secretary requests a repayment schedule of 15% of Petitioner’s disposable monthly income, or \$149.00 per month. (Sec’y Stat., ¶ 5; Dillon Decl., ¶ 9.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that no debt exists, that the amount of the debt is incorrect, or that the terms of the repayment schedule would create a financial hardship.

Petitioner here initially contended that she did not sign the Note, and therefore was not responsible for the debt. (Petitioner’s Hearing Request (“Pet’r’s Hr’g. Req.”), p. 1, filed February 6, 2012.) However, Petitioner later abandoned that defense, acknowledging that “my signature is on the documents.” (Petitioner’s Documentary Evidence (“Pet’r’s Doc. Evid.”), p. 1,

filed May 14, 2012.) Petitioner now argues that she is currently unemployed, and that any garnishment “would cause even greater economic hardship for me.” (Id.) Additionally, she states that her mother was the primary party on the Note, and suggests that HUD pursue garnishment of her mother’s wages before seeking to collect from Petitioner. (Id.)

HUD regulations prohibit the Secretary from garnishing 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.” 31 C.F.R. § 285.11(j). The burden rests with the debtor to inform the agency of the circumstances of the involuntary separation. (Id.)

As part of her documentary evidence, Petitioner has included a copy of a letter from AON Hewitt, addressed to Petitioner. (Pet’r’s Doc. Evid, p. 7.) The subject line of the letter reads “Separation from AON Hewitt,” and the letter states that “Aon Hewitt ... is permanently eliminating your position effective May 18, 2012, or within 14 days thereafter.” (Id.) This letter provides definitive proof that Petitioner was recently and involuntarily separated from her previous employment. The Secretary has not come forward with any evidence that Petitioner has other employment. Accordingly, Petitioner is excluded from any garnishment until such time as she has been continuously reemployed for at least 12 months.

Petitioner also asserts that any garnishment will cause substantial financial harm. (Id. at p. 1.) As support, she has filed a copy of her student loan statement and a final divorce decree. (Id. at pp. 2-6.)

Petitioner’s evidence is insufficient to prove financial hardship. To prevail on this claim, Petitioner must provide pay statements for the past 12 months, as well as proof of essential household expenses and proof of payment of those expenses. (*See* Notice of Docketing, 2.) Petitioner has provided no such evidence. I therefore find that Petitioner has not met her burden of proving that HUD’s proposed garnishment would cause significant financial hardship.

Finally, Petitioner asks the Court to pursue garnishment of her mother’s wages rather than Petitioner’s because the loan was intended to prevent foreclosure of her mother’s home. (Pet’r’s Doc. Evid., p. 1.) This Court has previously held that co-signers of a loan are jointly and severally liable to the obligation, and as a result, “a creditor may sue the parties to such obligation separately or together.” *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). As such, “the Secretary may proceed against any co-signer for the full amount of the debt.” *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004).

Petitioner admits to co-signing the Note and the subordinate mortgage. (Pet’r’s Doc. Evid., p. 1.) The sixth paragraph of the Note states that “[I]f more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed.” (Sec’y Stat.; Note, ¶ 6.) HUD is therefore within its right to pursue collection of the debt from Petitioner, her mother, or both.

Upon a careful review of the evidence presented by Petitioner and the Secretary, I find that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the

amount claimed by the Secretary. However, any attempt to garnish Petitioner's wages at this time is prohibited by 31 C.F.R. § 285.11(j). As such, HUD may not collect this debt at this time.

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 shall remain in place **INDEFINITELY.**

It is hereby **ORDERED** that the Secretary shall not refer this matter to the U.S. Department of the Treasury for administrative wage garnishment of any wages due to Petitioner. The Secretary shall not be prejudiced from seeking to reinstate this action after Petitioner has been reemployed for more than 12 months.

H. Alexander Manuel
Administrative Judge

May 31, 2012