

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 24, 2004

GSBCA 16520-DBT

In the Matter of TRACY W [REDACTED]

Clay Gergick, Chief, Receivables Collections and Sales Section, General Services Administration, Kansas City, MO, appearing for General Services Administration.

Tracy W [REDACTED], [REDACTED], Respondent.

NEILL, Board Judge.

The General Services Administration (GSA), having been unsuccessful in collecting what it contends is a bonafide debt of Ms. Tracy W [REDACTED], now wishes to garnish the amount due from Ms. W [REDACTED]'s disposable pay. GSA proposes to do this pursuant to garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. No. 104-134, 110 Stat. 1321 (1996).

On October 7, 2004, this Board issued a docketing order to GSA officials and Ms. W [REDACTED] acknowledging that GSA had forwarded to the Board Ms. W [REDACTED]'s request for an administrative wage garnishment (AWG) hearing. Under GSA's recently amended regulations implementing the DCIA (effective December 10, 2003), a debtor has the right "[t]o request a hearing . . . concerning the existence and/or amount of the debt, and/or the terms of the proposed repayment schedule under the garnishment order." 68 Fed. Reg. 68,760 (Dec. 10, 2003) (to be codified at 41 CFR 105-57.004).

The documentation provided with GSA's AWG hearing request provided little information regarding the origin and nature of the alleged debt. We, therefore, requested GSA to provide an administrative report regarding this case. GSA promptly complied with our request. We then provided a copy of the agency's administrative report to Ms. W [REDACTED] with the request that she provide her own comments on the report no later than Thursday, November 11. She failed to reply to our request. By overnight mail, we advised

Ms. W [REDACTED] on Wednesday, November 17 that it was our intention to convene a telephonic hearing on Tuesday, November 23. On that date, Ms W [REDACTED] made herself available for the hearing and provided answers to some additional questions the Board had after reviewing the materials submitted by GSA.

Based upon the information provided, we make the following findings of fact.

Findings of Fact

1. On December 8, 2002, a vehicle owned by GSA's Fleet Management Service and leased to the United States Navy was stolen. It was later recovered by GSA after sustaining damage in an accident. The cost of repairs to the vehicle amounted to \$3,971.51. Agency Report, Attachments A-B. The person eventually arrested and charged with theft of the vehicle was the teenage son of Ms. W [REDACTED]. Id., Attachment C.

2. By letter dated May 28, 2003, an employee of GSA's Fleet Management Service wrote Ms. W [REDACTED] to say: "After reviewing the facts, we have determined that you are liable for the damages to the government vehicle totaling \$3,971.51." The letter asked for immediate payment of this amount and warned that if a payment of the debt was not promptly made, Ms. W [REDACTED] would be subject to interest on the debt, a penalty for delinquent payment, and charges for the administrative costs associated with the collection of the debt. Agency Report, Attachment D. The Government's claim was supported by copies of repair invoices. Also included in this demand letter was an explanatory sheet advising Ms. W [REDACTED] of GSA's policy regarding debts and advising her of her debtor rights. Among these rights were the right to inspect and copy records pertaining to the debt, the right to dispute information in these records, the right to appeal any unresolved dispute, and the right to request a repayment agreement if a lump sum payment would create a financial hardship. Id., Attachment E.

3. By letter dated June 30, 2003, GSA's regional finance center sent a second notice to Ms. W [REDACTED], this time demanding payment of \$3,978.47 and warning that interest would continue to accrue on this claim until paid. Agency Report, Attachment F. This interest charge, however, was waived when Ms. W [REDACTED] immediately indicated a willingness to agree to a repayment plan. By letter dated the following day, July 1, 2003, GSA sent for Ms. W [REDACTED]'s consideration a promissory note to be executed by her. The note provided for seventy monthly payments of \$60 and a final payment of \$44.45 for payment of the original claim of \$3,971.51 plus interest at the rate of "2.2500%," first payment to be made on August 2, 2003. On July 14, 2003, Ms. W [REDACTED] signed the note before a notary public for Wayne County, Michigan. Id., Attachments G-I.

4. Ms. W [REDACTED] failed to make any payment on the promissory note. A "Claim Action History Report" contained in the agency's report notes that, on December 22, 2003, GSA "deactivate[d] promissory note" and referred a claim for \$3,971.51 to the Department of the Treasury's Financial Management Service (FMS) for collection. Agency Report, Attachment I. Shortly thereafter, on January 5, 2004, FMS advised GSA that the debtor wished to enter into a repayment agreement according to which she would pay \$133 down and monthly installment payments of the same amount until the debt was paid. Treasury's communication of this information to GSA mentions neither the amount of the debt, nor any applicable interest on the amount due, nor the number of payments required to pay off the debt. Nevertheless, on the following day, January 6, GSA agreed to the proposed monthly payment of \$133. Id., Attachment J.

5. By letter dated September 10, 2004, a private collection agency advised Ms. W [REDACTED] that she owed GSA \$5,226.70 and that, if this amount was not paid, the Treasury Department, on behalf of GSA, would issue a garnishment order requiring her employer to deduct and send to the Government up to 15% from her disposable pay for each period until the debt plus interest, penalties, and costs was paid in full. In addition, this letter advised Ms. W [REDACTED] that she could inspect and copy GSA's records relating to her debt and that she could also request a hearing from GSA by completing and mailing an enclosed form. The letter assured Ms. W [REDACTED] that, if this enclosed form was received before October 1, 2004, the Treasury Department would not issue a wage garnishment on behalf of GSA until after a hearing had been held and a decision rendered. GSA's AWG Hearing Request at 4-5 (unnumbered).

6. Ms. W [REDACTED] signed and returned the form requesting an AWG hearing. Her request was received by the collection agency on September 23. The request was forwarded to the Treasury's FMS and then to GSA officials. GSA, in turn, then requested this Board to conduct a hearing and render a decision in accordance with GSA's AWG regulations.

7. From documentation contained in GSA's initial AWG hearing request, it is clear that the collecting agency which wrote Ms. W [REDACTED] on September 10 had been in contact with her previously and had secured some limited information regarding her income and monthly expenses. A fact sheet included in the request shows that Ms. W [REDACTED]'s case was referred to the collection agency on March 20, 2004. The amount listed on the sheet as "Referred" is \$5,226.70. The "Current Bal[ance]" is said to be \$4,083.36. One line on the fact sheet reads "Interest Rate:" and is followed by the figure "0.000%." Another line reads "Interest Amt:" and it is followed by the figure "0.00." As to monthly income and expense information regarding the debtor, the agency fact sheet lists Ms. W [REDACTED]'s income as \$900. Her rent is listed as \$350; food is listed as \$200; and her cost of utilities is listed at

\$200. No entry is made on the fact sheet for health insurance. GSA's AWG Hearing Request at 10-14 (unnumbered).

Discussion

GSA's AWG regulations provide that, when a hearing is held at the debtor's request:

(1) GSA will have the burden of establishing the existence and/or amount of the debt. (2) Thereafter, if the debtor disputes the existence and/or amount of the debt, the debtor must prove by preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

68 Fed. Reg. 68,760, 68,763 (Dec. 10, 2003) (to be codified at 41 CFR 105-57.005(f)).

Based upon the record before us, we conclude that GSA has not met its burden of establishing the existence or the amount of Ms. W [REDACTED]'s alleged debt. While the data regarding the cost of repairs made to the damaged vehicle appears to be persuasive, we find nothing in the record to support GSA's assumption that Ms. W [REDACTED]'s son is liable for the cost of repairing the agency's damaged vehicle. We likewise find no support for the additional assumption on GSA's part that Ms. W [REDACTED] is personally responsible for any obligation her son might have to pay for this cost of repair. In other words, we remain unconvinced that a debt actually exists *so far as these two individuals are concerned*. Because we find that GSA has failed to carry this initial burden, Ms. W [REDACTED]'s failure to challenge the agency's contention is immaterial.

The agency report tells us that Ms. W [REDACTED]'s son was arrested and charged with theft of the Government's vehicle. The agency also alleges that the court ordered the son to pay for the damage done to the vehicle. Unfortunately, however, GSA has been unable to document this alleged determination of liability. It has failed to provide us, for example, with a copy of the court's order. Instead, we are left only with the initial determination made by an employee of GSA's Fleet Management Service that "[a]fter reviewing the facts, we have determined that you are liable for the damages to the government vehicle totaling \$3,971.51." Finding 2.

When GSA alleges as part of an AWG hearing that a debt exists, we expect the agency to identify the legal standard it is using to determine this fact. In another case also involving a motor vehicle belonging to GSA's Fleet Management Service, the agency sought

recovery for damages done to one of its vehicles as a result of an individual's tortious conduct. In that case we have concluded, in a decision issued on this same date, that the agency failed to establish the existence of a debt so far as the alleged debtor was concerned. We reach the same conclusion here and for the same reason. In cases such as these, we expect the agency to identify for us the legal standard to be applied in order to determine (i) that a tort has occurred and (ii) that the alleged debtor is in fact liable for any resulting damages.

In the case now before us, a conviction and order from a court of competent jurisdiction directing Ms. W [REDACTED]'s son to pay for repair of the vehicle would at least identify the legal standard used to determine his liability. Nevertheless, even if the court's action were to be documented, we would still expect the agency to identify for us the legal basis for concluding that Ms. W [REDACTED] is personally responsible for this debt of her son. Since the record for this case provides us with nothing except the bare, unsupported assertion of liability, we obviously can draw no conclusion regarding the existence of the alleged debt.

We are of course aware that the record does contain a promissory note executed by Ms. W [REDACTED], which covers the cost of the repairs made to GSA's vehicle and the interest due on the unpaid portion of the note. The status of this note, however, is far from clear. Documentation provided with the agency's report indicates that the note was "deactivated" on December 22, 2003. Further, we find no evidence in the record that GSA or the FMS ever sought to collect from Ms. W [REDACTED] the amount which would be due pursuant to the terms of the note in the event of default. Rather, in late December 2003, GSA referred to Treasury only a debt of \$3,971.51 and, in early January 2004, agreed to repayment terms of \$133 per month for an unspecified period of time. See Findings 3-4. We conclude, therefore, that the debt which is the subject of this proceeding is that said to arise from damage to GSA's vehicle and not one based solely upon a defaulted promissory note. In any event, if it was the intention of GSA to seek garnishment based solely on the defaulted note, we would have expected the agency to identify for us and discuss the legal standards supporting the existence of a debt based solely on a defaulted note. This, of course, has not been done.

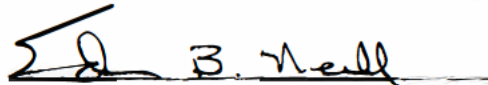
The Government's showing regarding the amount of the alleged debt is similarly insufficient. The notices provided to Ms. W [REDACTED] warned her of interest, penalties, and administrative costs for which she might be responsible if she failed to respond promptly to GSA's demand for payment. Yet, the amount used as the basis for the promissory note was not the \$3,978.47 of the demand letter of June 30, 2003, but the basic claim for \$3,971.51 asserted in GSA's letter of May 28, 2003. Findings 2-3. By September 2004, the amount due was said to amount to \$5,226.70. Finding 5. In contrast, the collection agency's fact sheet shows a figure of \$5,226.70 as "Referred" and a figure of \$4,083.36 as "Current

Bal[ance]." Finding 7. When asked by us to explain these different amounts, the agency simply stated that the difference was attributable to additional interest and collection fees but that the Department of the Treasury would have to provide an itemized list of interest, late charges, and the fees of the collection agency.

We recognize that by law the Government is required to charge interest and penalties on unpaid claims and can likewise, under certain circumstances, waive such interest and charges. See 31 U.S.C. § 3717 (2000). In establishing the amount of a claim for purposes of an AWG hearing, however, we expect GSA to account in detail for any charges it adds or elects not to add to the basic amount initially found due. Even if GSA had successfully met its burden of establishing the existence of the alleged debt, the information provided regarding the total amount claimed is confusing and insufficiently detailed to support any determination on our part of an amount in excess of the original amount stated in GSA's letter of May 28, 2003.

Decision

For the reasons set out above, we conclude that GSA has not established the existence of a debt owed by Ms. W [REDACTED] as required in order to effect an administrative wage garnishment.


EDWIN B. NEILL
Board Judge