



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

In the Matter of:

**Kevin Vines,**  
Petitioner

HUDOA No. 10-H-CH-AWG111  
Claim No. 721003721

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Pro se

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For the Secretary

**DECISION AND ORDER**

On August 2, 2010, 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 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 Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. 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 August 6, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage

withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated August 6, 2010.)

### **Background**

Petitioner executed and delivered to the Secretary a partial Claim Promissory Note (“Note”) in the amount of \$11,116.80. (Secretary’s Statement (“Sec’y Stat.”), filed August 31, 2010, ¶ 2, Ex. A.) Petitioner also executed a Subordinate Mortgage, in which the Secretary paid this partial claim. (Sec’y Stat., ¶ 2, Ex. B.) The Note cites specific events that made the debt become due and payable, one of these events being if the Petitioner had paid in full all amounts due under the primary note and related mortgage insured by the Secretary. (Id.) On or about November 24, 2004, the FHA insurance on the first mortgage was terminated, as the lender indicated the mortgage was paid in full. (Sec’y Stat., ¶ 4, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD (“Dillon Decl.”), dated August 31, 2010, ¶ 4.)

Petitioner is currently in default on the note. The Secretary has made efforts to collect from the Petitioner other than by administrative wage garnishment but has been unsuccessful. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$3,336.35 as the unpaid principal balance as of July 30, 2010;
- (b) \$00.00 as the unpaid interest on the principal balance at 4% per annum through July 30, 2010; and
- (c) interest on said principal balance from August 1, 2010, at 4% per annum until paid.

(Sec’y Stat., ¶¶ 6-7, Ex. B, Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated April 29, 2009 was sent to Petitioner. (Sec’y Stat., ¶ 8, 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 under terms agreeable to HUD. (Sec’y Stat., ¶ 9, Dillon Decl., ¶ 7.) As of this date, Petitioner had not entered into a written repayment agreement. (Sec’y Stat., ¶ 9, Dillon Decl., ¶ 7.) Petitioner provided a copy of his weekly pay statement for the pay period ending August 14, 2010. (Sec’y Stat., ¶ 13, Ex. C, Dillon Decl., ¶ 11.) This pay statement indicates that Petitioner’s gross pay totaled \$1,641.17... indicating a weekly net disposable pay of \$1,299.82. (Sec’y Stat., ¶ 13, Dillon Decl., ¶ 11.) As a result, the Secretary’s proposed repayment schedule is \$140.34 or the amount authorized by law not to exceed 25% of Petitioner’s disposable weekly pay after deducting the \$184.62 child support garnishment. (Sec’y Stat., ¶ 14, Dillon Decl., ¶ 12.)

### **Discussion**

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists or that the terms of the proposed repayment schedule would cause him financial hardship.

Petitioner states that he did not owe the alleged debt in the amount claimed by the Secretary: “I have a Balance of 12658.71 3-23-09[.] [M]y paycheck was garnished and I have

been looking at all that has been sent to you and I feel that it is paid or close to it.” (Petitioner’s Request for Hearing, dated August 2, 2010). Petitioner failed, however, to provide the necessary documentation in support of his claim challenging the amount of the debt, despite being ordered on three occasions to submit documentary evidence to support his position. (Notice of Docketing, dated August 6, 2010, Order, dated September 2, 2010, and Order to Show Cause, dated October 20, 2010.) This Office has previously held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable.” *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Thus I find Petitioner’s claim fails for lack of proof.

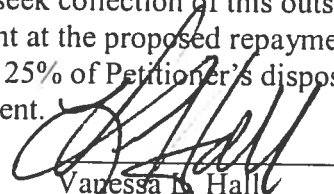
Next, Petitioner claims that the alleged debt does not exist. Petitioner did not submit documentary evidence to support this position as well. Instead, Petitioner made a request to “have my account audit to see where we stand Please.” (Id.) The Secretary, in response, contends that “Petitioner’s debt became due when the first mortgage was paid in full,” as required under the terms in the Subordinate Note. (Sec’y Stat., ¶ 4.) As support, the Secretary submitted a copy of the Subordinate Note bearing Petitioner’s signature, in which Petitioner accepted and agreed to the terms and covenants of the Subordinate Note. (Sec’y Stat., Attach Note, p.2; Dillon Decl., ¶ 4.) A review of the terms and covenants provided in the Subordinate Note indicate that payment on the alleged debt is due upon the occurrence of certain events, one of which is when the “Borrower has paid in full all amounts due under the primary Note and related mortgage, deed of trust, or similar Security Instruments insure by the Secretary.” Petitioner has paid in full the primary Note in this case. Additionally, the Secretary provided a copy of the Case Reconstruction Report dated August 16, 2010 that showed all the payments posted by HUD towards Petitioner’s account. (Sec’y Stat., Ex. B, ¶ 9, Ex. A1). Therefore, without any documentary evidence from Petitioner to refute or rebut the evidence submitted by the Secretary that the subject debt is enforceable, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

### **ORDER**

Based on the foregoing, I find that the debt that is the subject of this proceeding is 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 at the proposed repayment schedule of \$140.34 or the amount authorized by law not to exceed 25% of Petitioner’s disposable weekly pay after deducting the \$184.62 child support garnishment.

  
Vanessa B. Hall  
Administrative Judge

January 21, 2011