



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

In the Matter of:

Thomas R. Franklin,

Petitioner.

HUDOA No. 10-H-CH-AWG119
Claim No. 7-0840160-0A

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Pro se

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For the Secretary

DECISION AND ORDER

On September 10, 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 as a mechanism for the collection of debts owed to the United States government.

The administrative judges of this Office are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if contested by a 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(f) (4), on September 16, 2010, 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 September 16, 2010.)

Background

HUD is the holder of a Retail Installment Contract, Note & Disclosure Statement (“Note”) signed by Petitioner in the original principal sum of \$8,600.00. After default by Petitioner, the Note was assigned to HUD under the regulations governing the Title I insurance program. (Secretary’s Statement (“Sec’y Stat.”), filed February 10, 2011, ¶ 2, Ex. B)

The Secretary has attempted to collect on the Note from Petitioner, but Petitioner remains in default. Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$8,021.33 as the unpaid principal balance as of September 30, 2010;
- (b) \$3,521.91 as the unpaid interest on the principal balance at 5% per annum through October 1, 2010; and
- (c) interest on said principal balance from October 1, 2010, at 5% per annum until paid.

(Sec’y Stat., ¶ 3; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”) ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was mailed to Petitioner on August 16, 2010. (Sec’y Stat. ¶ 4.) In accordance with 31 C.F.R. 285.11(e) (2) (ii), Petitioner was afforded the opportunity to enter into a repayment agreement but declined to do so. (Id.) On September 16, 2010, a Wage Garnishment Order was issued to Petitioner’s employer. (Sec’y Stat., ¶ 5.) Several attempts were made to obtain Petitioner’s current pay stub but Petitioner declined to comply. (Sec’y Stat. ¶ 6; Dillon Decl. ¶ 8.) The Secretary proposes a repayment schedule of \$321.00 per month or 15% of Petitioner’s disposable income. (Id.)

Discussion

Petitioner does not contest the existence of the debt but claims that he does not owe the full amount of the debt. (Pet’r’s Hr’g Req.) More specifically, Petitioner argues that, “Debt is split between [ex]-wife & myself 50% each. Her address: Jennifer D. Burqe, 1710 E. Timber Ridge Dr. Sedalia MO. 65301-8958 (660) 836-1749. Please rework payment plan for new amount split ([\$]5739.00 each).” (Id.)

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 September 16, 2010, Order, dated October 28, 2010, and Order to Show Cause, dated December 29, 2010.) The Secretary, on the other hand, submitted as evidence a copy of the Note signed by Petitioner and his spouse, in which both parties agreed:

“JOINT LIABILITY. Any person who signs this agreement as a co-maker, endorses it, or guarantees its payment, is jointly and

severally obligated – that is, each such person is equally responsible with you, just as if that person were the only to sign this agreement. We do not have to notify such person that the loan has not been paid. We can postpone or extend payments or change the terms of payment or release any property without giving notice to such person or releasing such person from responsibility on this loan.

(Sec’y. Stat., Ex. A, Attached Note.)

In addition, upon a further review of the Note, the terms of the agreement do not reflect that a 50/50 payment arrangement existed between Petitioner and his ex-spouse. (*See Id.*)

However, even if Petitioner and his ex-spouse had an agreement that the payment of the alleged debt was divided 50/50, Petitioner still would not be released from his legal obligation to pay the debt that is the subject of this proceeding. This Office 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). “The Secretary may proceed against any co-signer for the full amount of the debt” because each co-signer is jointly and severally liable for the obligation. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Additionally, the Secretary’s right to collect the alleged debt in this case emanates from the terms of the Note. *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the subject debt, he must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release him from his obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

In the instant case, Petitioner has failed to produce any evidence of a written release from his obligation to pay the alleged debt or any evidence of valuable consideration paid to HUD in satisfaction of the debt. Thus the alleged debt remains enforceable against Petitioner. While the Petitioner may be divorced from his ex-spouse, neither the Secretary nor the lender was a party to the divorce action. So as a recourse, Petitioner may seek to enforce, in the state or local court, the divorce decree that was granted against his ex-wife so that Petitioner may recover from his ex-spouse monies paid to HUD by him in order to satisfy this legal obligation. *See Michael York*, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3. Without proof of a written release, Petitioner remains legally obligated to pay the subject debt as a co-signer on the Note. *See Elizabeth Aragon*, HUDBCA No. 97-C-SE-W231 (October 28, 1997) (citing *Nona Mae Hines*, HUDBCA No. 87-1907-G240 (February 4, 1987) (held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable.”) Therefore, I find Petitioner’s claim fails for lack of proof.

As a final point, Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including a *determination against a noncomplying party*. (emphasis added).

Accordingly, because Petitioner has also failed to comply with any of the Orders issued by this Office, I find that Petitioner's non-compliance to the Orders issued by this Office provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

ORDER

For the reasons set forth above, 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 rate of \$321.00 per month or 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

March 25, 2011