



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

In the Matter of:

Jeffrey A. Lorie,
Petitioner

HUDOA No. 10-H-CH-AWG87
Claim No. 2300441030A

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Pro se

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For the Secretary

DECISION AND ORDER

On May 21, 2010, Petitioner filed a request for 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 May 25, 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 May 25, 2010.)

Background

The nature of the debt is a Manufactured Home Retail Installment Sales Contract and Security Agreement (“Note”) that has been executed by Petitioner. (Secretary’s Statement (“Sec’y Stat.”), filed August 25, 2010, ¶ 1, Ex. 1; Ex. 2, Declaration of Christopher C. Haspel, Director, Mortgage-Backed Securities (“MBS”) Monitoring Division of the Government National Mortgage Association (“Ginnie Mae”), HUD (“Haspel Decl.”), dated August 23, 2010, ¶ 3.) Lender Services was defaulted by Ginnie Mae as an issuer of MBS due to its failure to comply with Ginnie Mae MBS requirements. (Sec’y Stat., Ex.2, Haspel Decl., ¶ 4.) Therefore, all of Lender Servicer’s rights and interest in Petitioner’s loan were assigned to Ginnie Mae by virtue of the assignment agreement contained in the Guarantee Agreement entered into between Ginnie Mae and Lender’s Services. (*Id.*)

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is currently indebted to the Department in the following amounts:

- (a) \$8,138.29 as the unpaid principal [balance];
- (b) \$929.60 as the unpaid interest on the principal [balance] at 14.25% per annum through November 6, 2003; and
- (c) \$665.43 as the unpaid penalties and any fees and charges that may be assessed by U.S. Department of the Treasury Debt Management Services.

(Secretary’s Supplemental Statement (“Suppl. Sec’y Stat.”), filed November 4, 2010, ¶ 1; Ex. 2, Supplemental Declaration of Christopher C. Haspel, Director, Mortgage-Backed Securities Monitoring Division of the Ginnie Mae, HUD (“Suppl. Haspel Decl.”), dated November 4, 2010, ¶ 5.) At the time the Note was assigned to HUD, Petitioner owed \$11,958.50. (Suppl. Haspel Decl., ¶ 3.) Ginnie Mae has collected \$5,215.84 through wage garnishment and treasury offset since the date of assignment. (Suppl. Sec’y Stat., ¶ 2; Ex. 2, Suppl. Haspel Decl., ¶ 4.) While Petitioner claims that a total of \$8,047.82 was paid, a payment of \$2,831.98 was returned. (*Id.*)

A Notice of Intent to Initiate a Wage Garnishment Proceeding, dated March 16, 2010, was sent to Petitioner.¹ (Suppl. Sec’y Stat., ¶ 3; Ex. 2, Suppl. Haspel Decl., ¶ 6.) “In the Notice, Petitioner was afforded the opportunity to enter into a written repayment program.” (*Id.*) On July 15, 2010, Petitioner was sent another letter requesting financial information for a repayment plan. (Suppl. Haspel Decl., ¶ 7, Ex. A.) On August 24, 2010, Petitioner informed counsel that he had submitted information related to settling

¹ The actual date of the Notice of Intent to Initiate a Wage Garnishment Proceeding was March 29, 2010 so March 29, 2010 was used as the appropriate reference for the Notice of Intent in this case.

this matter to “HUD” and was told that his paperwork was being reviewed. (Suppl. Sec’y Stat., ¶ 6.) Petitioner stated the number that he dialed was s(888) 826-3127 and that number connects to the Department of Treasury. (Id.) As of August 25, 2010, Ginnie Mae informed counsel that no offer to settle or enter into a repayment plan had been received. (Id. at ¶ 7). Because Petitioner has not entered into a voluntary repayment agreement or provided Ginnie Mae with information related to his current income and expenses, Ginnie Mae proposes a repayment schedule of 15% of Petitioner’s disposable income or the maximum amount allowed under the law. (Suppl. Sec’y Stat., ¶ 4.)

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, that the amount of the alleged debt is incorrect, or that the debt is unenforceable or not past due. Petitioner challenges collection of the alleged debt and claims that he: (1) does not owe the full amount of the debt; (2) requested contact information regarding this matter; (3) questions the legality of the debt collection procedure; (4) believes the collection of this debt is barred by the statute of limitations; and, (5) wishes to settle the matter.

First, Petitioner claims the amount of the debt is incorrect and further claims: “I do not owe the full amount of the debt.” (Request for Hearing (“Pet. Hr’g. Req.”), filed May 21, 2010). Petitioner claims he paid \$8,047.82 toward the original debt amount of \$13,488.47, and now owes the remaining balance of \$5,404.65. (Id.) Later, Petitioner inquired about the amount of the “outstanding balance” that is alleged to be owed. Petitioner contends “I have had more than \$8,000.00 of my federal taxes garnished to date . . . My wages have been garnished since May 2010 totaling more than \$128.00 a week. In addition, one of my bonus checks was garnished. Between the two[,] a total of more than \$9,300.00 has been garnish [sic].” (Petitioner’s Letter (“Pet’r Ltr.”), filed July 22, 2010.) While Petitioner also refers to the “garnishment” of his federal taxes, this proceeding solely addresses Petitioner’s appeal regarding the collection of this debt by means of administrative wage garnishment, over which this Office now has jurisdiction. This Office does not yet have jurisdiction over the administrative offset issue raised by Petitioner regarding his federal taxes. As a result, this Office is not in the position to address that issue at this time.

Here, the Secretary has the initial burden of proof to prove the amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). As support for the amount of the alleged debt claimed by the Secretary, the Secretary submitted a copy of the Note, bearing Petitioner’s signature, that reflected the amount of the alleged debt in this case. The Secretary also submitted signed affidavits from Mr. Haspel, Director, Mortgage-Backed Securities (“MBS”) Monitoring Division of the Government National Mortgage Association, that substantiated that based upon records maintained with the Ginnie Mae Mortgage-Backed Securities Monitoring Division, that Petitioner owed the alleged debt. (Sec’y Stat., Ex. 1; Haspel Decl., Attachment; Suppl. Haspel Decl., Attachment.) Petitioner, on the other hand, has failed to show by a preponderance of the evidence sufficient evidence to either rebut or refute the alleged debt amount claimed by the Secretary. See 31 C.F.R. § 285.11(f)(8)(ii).

Without such evidence, Petitioner's claim fails for lack of sufficient and credible documentary evidence.

Petitioner was previously ordered to file, specifically, "[e]vidence of federal payments due to Petitioner that have been offset by the Department of Treasury between January[] 2007 through December 2010; [p]ay statements that reflect administrative garnishments of Petitioner's pay from January[] 2005 through May 2010; [and] [e]vidence of bonuses that have been garnished to satisfy Petitioner's alleged debt to HUD." (Order, ("Oct. Order") dated October 1, 2010.) Petitioner has failed to comply, however, with the Oct. Order by failing to provide the requested documents that possibly could have supported his position. This Office has consistently maintained that assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due or enforceable. *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, I find Petitioner's claim fails for lack of proof.

Second, Petitioner requested information about "Who is the correct contact person to speak with specifically regarding this matter? Please include contact telephone number, email address and/or fax number." (Pet'r Ltr.) Petitioner also argues: "Why did line Barger Gobban Blair & Sampson representatives of HUD-GOV NTL ASSC not respond to my settlement in 2004?" and "Where are my garnished wages going?" (*Id.*)

However, Petitioner was issued a Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing") on May 25, 2010, in which Petitioner was informed:

Documents relating to this alleged debt are not in the possession of this Office. Petitioner may request copies of these documents by writing to: Kim McManus, U.S. Department of Housing and Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY 12203.

(Notice of Docketing, pp. 2-3).

As such, Petitioner has already been properly informed on how to obtain documents related to the subject debt.

Third, Petitioner challenges the legality of the procedure for collecting the debt by means of administrative wage garnishment. Petitioner contends: "Is the garnishment of my wages legal for the state of Texas? Is the garnishment of wages legally justified since HUD is the one on record to file for garnishment but has no record of the alleged debt? Are any or all of the interest and penalties applied against me legal (even after I tried to settle this account and received no return response)?" (Pet'r Ltr.)

An examination of the record indicates that Petitioner has already been informed about the legal procedure for collecting the alleged debt by means of administrative wage garnishment. Such notice was provided in the Notice of Intent to Initiate Administrative

Garnishment Proceedings received by Petitioner on March 29, 2010. (Pet'r Ltr., Attach., "Important Notice Regarding Administrative Wage Garnishment"). The Notice of Intent provided that:

Under Federal law, a Federal agency may, without first obtaining a court order, order an employer to withhold up to 15% of your wages for payment to the Federal agency to satisfy a delinquent non-tax debt. See 31 U.S.C. 3720D; 31 C.F.R. 285.11. Additional information may be found at FMS' website: <http://www.fms.treas.gov/debt> .

(Id., Attach., ¶ 1.)

Therefore, I find that Petitioner has already been provided with the necessary resources to inform Petitioner about the legal ramifications, including the accrual of penalties and interest, involved in administrative wage garnishment proceedings under the governing regulations.²

Fourth, Petitioner contends that HUD is barred by the statute of limitations from collecting the alleged debt, and further contends "I believe this debt has passed the statute of limitation[s]?" (Pet'r Ltr.) No statute of limitations applies to this action because this Office has consistently maintained that an "alleged delay in pursuing HUD's claim does not prevent the Secretary from enforcing the terms of the Note." *Lora Foley*, HUDOA No. 09-M-AWG20 (March 23, 2009), citing *David Olojo*, HUDOA No. 07-H-CH-AWG19 (October 4, 2007) ("It is well-established, however, that the United States is not generally subject to the defense of laches"). Furthermore, the U.S. Supreme Court held, in *BP America Prod. Co. v. Burton*, that no statute of limitations bars agency enforcement actions by means of administrative wage garnishment. 127 S. Ct. 638, 643 (2006); see also *Douglas Hansen*, HUDBCA No. 06-A-CH-AWG03 at 3 (February 13, 2007) ("There is no time impediment to HUD's attempt to collect Petitioner's debt by means of administrative wage garnishment"). Therefore, I find that the collection of the subject debt is not barred by any statute of limitations.

Lastly, Petitioner "desire[s] to settle and compromise the matter." (Pet'r Ltr.) While Petitioner may wish to negotiate repayment terms with HUD, this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Petitioner may want to discuss this matter with Counsel for the Secretary or submit a HUD Office Title I Financial Statement (HUD Form 56142) to Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

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.

² See 31 U.S.C. § 3720D, 31 C.F.R. §285.11.

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 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

January 28, 2011