



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

In the Matter of:

Richard Castle,

Petitioner

:
:
: HUDOA No. 10-H-NY-AWG117
: Claim No. 780689979
:

Richard Castle
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Pro se

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For the Secretary

DECISION AND ORDER

On August 16, 2010, Petitioner made a request for a hearing concerning a proposed repayment schedule incident to a wage garnishment order sought by the Secretary relating to a debt owed to the U.S. Department of Housing and Urban Development ("HUD") that Petitioner claims does not exist. 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 Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b).

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. (See 24 C.F.R. § 17.170(b).) 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 a financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. (Id.) As a result, pursuant to 31 C.F.R. § 285.11(f) (4) this Office, on August 17, 2010, 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”), dated August 17, 2010.)

Background

On July 14, 2005, Petitioner executed and delivered a Note to Domestic Bank a Note (“Note”), in the amount of \$25,000.00, that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (“Sec’y Stat.”), filed September 10, 2010, ¶ 2; Ex. A ¶ 1). Petitioner failed to make payment on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54 on January 5, 2007, Domestic Bank assigned the Note to the United States of America. (Sec’y Stat., ¶ 3 Ex. B, p. 1.)

Petitioner is currently in default on the Note. The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. (Sec’y Stat., ¶ 4; Ex. C, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated August 31, 2010, ¶ 1, ¶ 3.) , ¶ 4.) Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$21,342.51 as the unpaid principal balance as of August 10, 2010;
- (b) interest on said principal balance from August 11, 2010, at 4% per annum until paid.

(Sec’y Stat., ¶ 4; Ex. C, Dillon Decl., ¶ 4). On January 28, 2008, a Notice of Intent to Initiate Administrative Wage Garnishment was mailed to Petitioner. (Sec’y Stat., ¶ 5; Ex. C, Dillon Decl., ¶ 5.) Petitioner was afforded an opportunity to enter into a written repayment agreement under terms agreeable to HUD pursuant to 31 C.F.R. § 285.11(e)(2)(ii). (Sec’y Stat., ¶ 6; Ex. C, Dillon Decl., ¶ 6.) As of August 31, 2010, Petitioner did not enter into a written repayment agreement with HUD. (Id.)

A Demand Notice was sent to Petitioner on January 29, 2007. The Notice states that additional penalties and charges for administrative costs will be added to the debt each year that the debt remains delinquent. In accordance with 31 U.S.C. § 901.9, penalties and administrative costs were charged as follows:

April 30, 2007	Penalty	\$1,565.16
April 30, 2007	AdministrativeCosts	\$ 35.33
April 30, 2008	Penalty	\$1,625.34
April 30, 2008	AdministrativeCosts	\$ 141.33

April 30, 2009	Penalty	\$1,448.48
April 30, 2009	Administrative Costs	\$ 141.33
April 30, 2010	Penalty	\$1,287.99
April 30, 2010	Administrative Costs	\$ 141.33

(Sec’y Stat., ¶ 7; Dillon Decl., ¶ 7.)

A Wage Garnishment Order dated February 27, 2008 was issued to Petitioner’s employer by the Department of the Treasury, Financial Management Service. (Id. at ¶ 8.) Based on the issuance of the Wage Garnishment Order, Treasury received 65 garnishment payments totaling \$9,025.40. Garnishment payments totaling \$8,904.30 were credited towards Petitioner’s debt, and are reflected in the outstanding balance now due in paragraph 4 and payments totaling \$223.01 are pending transmittal to HUD. (Id. at ¶ 9.) Pursuant to Petitioner’s most recent garnishment, the Secretary’s proposed repayment schedule is \$138.35 bi-weekly or 15% of Petitioner’s disposable pay. (Id. at ¶ 10.)

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 amount of the alleged debt is incorrect. Petitioner acknowledges that he is “fully responsible for this loan, and have never disputed paying it back.” (Petitioner’s Request for Hearing, (“Hr’g Req.”), filed August 12, 2010). But, Petitioner disputes the amount of the debt as claimed by the Secretary and contends that “I originally took a Home Improvement loan from Domestic Bank in 2005, which was backed by H.U.D. The original ammount [sic] of the loan was \$25,000.00. Since then, I lost my home to foreclosure, and this loan also defaulted.” (Hr’g Req.) Petitioner further claims that “after nearly 3 years of wage garnishment, my balance is still more than the original loan.” (Id.)

On three occasions this Office ordered Petitioner to file documentary evidence to prove “that the amount of the alleged debt is incorrect” or to support that the alleged debt was otherwise unenforceable due to foreclosure. (Notice of Docketing, p. 2, dated August 17, 2010; Order, dated September 16, 2010; Order to Show Cause, dated November 5, 2010.) To date, Petitioner has failed to comply with the Orders issued by this Office. This Office has held 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). Accordingly, this Office finds that Petitioner’s claim fails for lack of proof.

Next, Petitioner questioned “Why am I being charges [sic] a penalty, when I am actively paying back the loan on a bi-monthly basis?” and further requested that there be “a full review from H.U.D.” of the alleged debt owed by Petitioner. (Id.)

In response, the Secretary provided, for the Office’s review, a copy of Petitioner’s Case Reconstruction Report (“Report”) that had been maintained by HUD’s Financial Operations Center on behalf of Petitioner. (Sec’y Stat., Ex. C, ¶ 11, Ex. A.) This Report showed the

financial history of Petitioner's account. (Id.) After reviewing the Report, it was evident from the record that Petitioner had not satisfied his indebtedness to HUD in a timely fashion and therefore, consistent with 31 U.S.C. § 3717 and 31 C.F.R. § 901.9, the imposition of alleged penalties and administrative costs, in addition to the balance that remained on the original debt, was warranted. Additionally, the Secretary provided a copy of the Declaration from the Director of the HUD's Financial Operations Center that justified the imposition of penalties and administrative costs against Petitioner for failing to pay the alleged debt in a timely fashion. In the absence of documentary evidence to rebut or otherwise refute the evidence provided by the Secretary, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

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, on three occasions, 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.

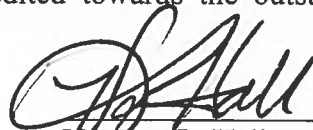
ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed 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 \$138.35 bi-weekly or 15% of Petitioner's disposable income. It is hereby

FURTHER ORDERED that any payments previously made towards the subject debt by Petitioner, if any, should be fully credited towards the outstanding balance claimed by the Secretary.



Vanessa L. Hall
Administrative Judge

January 21, 2010