



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

In the Matter of:

Gary Taylor,

Petitioner

:
:
: HUDOA No. 10-H-NY-AWG28
: Claim No. 780708324

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Pro se

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For the Secretary

DECISION AND ORDER

On December 31, 2009, 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 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. 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.* Pursuant to 31 C.F.R. § 285.11(f)(4) and (10), on January 12, 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.

Background

On June 25, 2004, Petitioner executed and delivered to Valcoa Builders a Home Improvement Installment Contract and Promissory Note ("Note") in the amount of \$21,315.00, which 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 January 26, 2010, ¶ 2, Ex. A.) Contemporaneously, the Note was assigned by Valcoa Builders to United Bank. (Sec'y Stat., ¶ 3, Ex. A.) As a result of Petitioner's failure to make payment on the Note as agreed, on September 30, 2008, United Bank assigned the Note to the United States of America in accordance with 24 C.F.R. § 201.54. (Sec'y Stat., ¶ 4, Ex. B.) The Secretary is the holder of the Note on behalf of the United States of America. (Sec'y Stat., ¶ 4, Ex. B.) Petitioner remains in default on the Note. (Sec'y Stat., ¶ 5.)

The Secretary has made efforts to collect from Petitioner but has been unsuccessful. (Sec'y Stat., ¶ 5, Ex. C, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated January 25, 2010, ¶ 4.) Petitioner is justly indebted to HUD in the following amounts:

- (a) \$18,608.42 as the unpaid principal balance as of January 22, 2010;
- (b) \$222.92 as the unpaid penalty balance as of January 22, 2010;
- (c) \$35.33 as the unpaid administrative cost balance as of January, 22, 2010;
- (d) \$1,264.53 as the unpaid interest on the principal balance at 3% per annum through January 22, 2010; and
- (e) interest on said principal balance from January 23, 2010 at 3% per annum until paid.

(Sec'y Stat., ¶ 5, Ex. C, Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated August 24, 2009 was sent to Petitioner. (Sec'y Stat., ¶ 6, Ex. C, Dillon Decl., ¶ 5.) As of January 25, 2010, Petitioner has not entered into a written repayment agreement. (Sec'y Stat., ¶ 7, Ex. C, Dillon Decl., ¶ 6.) A Wage Garnishment Order dated September 24, 2009 was issued to Petitioner's employer. (Sec'y Stat., ¶ 8, Ex. C, Dillon Decl., ¶ 7.) Based on the issuance of the Wage Garnishment Order, U.S. Department of the Treasury has received 15 garnishment payments totaling \$1,393.30, of which 12 payments totaling \$1,143.82 have been forwarded to HUD and are reflected in the outstanding balance. (Sec'y Stat., ¶ 9, Ex. C, Dillon Decl., ¶ 8.)

After a review of Petitioner's previous pay stubs, it appears that Petitioner's employer was withholding approximately 10% of Petitioner's gross weekly pay instead of the 15% as prescribed in 31 C.F.R. § 285.11. (Sec'y Stat., ¶ 10, Ex. C, Dillon Decl., ¶ 9.) Therefore, the Secretary proposes that \$106.41, or 15% of Petitioner's disposable income, is a reasonable amount to garnish pursuant to 31 C.F.R. § 285.11(i)(A). (Sec'y Stat., ¶ 11, Ex. C, Dillon Decl., ¶ 10.)

Discussion

Petitioner disputes the amount of the proposed garnishment by claiming that the terms of the repayment schedule would cause a financial hardship. Petitioner states "I can't afford to pay the amount being garnished. Other bills are not getting paid, and I am getting deeper in debt. I can probably afford to pay \$25 - \$30 per week." (Petitioner's Request for Hearing, filed December 31, 2009.) However, Petitioner has failed to provide the necessary documentation, as required under 31 C.F.R. § 285.11(f)(8)(ii), to support his claim despite being ordered three times to do so. (Notice of Docketing, Order, and Stay of Referral, dated January 12, 2010; Order, dated February 4, 2010; and Order to Show Cause, dated March 9, 2010.)

Without such evidence Petitioner's claim fails for lack of sufficient and credible documentary evidence. 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). Therefore, I find Petitioner's claim of financial hardship fails for lack of proof.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be past due and 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 in the amount of 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

June 18, 2010