



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

In the Matter of:

Demetrio Rodriguez,
 Petitioner

HUDOA No. 10-H-NY-AWG50
 Claim No. 721000685

Demetrio Rodriguez
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Pro se

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For the Secretary

DECISION AND ORDER

On February 12, 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 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 February 17, 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 two separate occasions, on November 8, 2002 and September 10, 2004, the HUD-insured loan on Petitioner's home was in default and Petitioner was threatened with foreclosure. (Secretary's Statement ("Sec'y Stat."), filed March 5, 2010, ¶ 2, Ex. A, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated March 3, 2010, ¶ 4.) In exchange for foreclosure relief, on November 8, 2002 and September 10, 2004, Petitioner executed Subordinate Mortgage Notes and Mortgages ("Notes") in favor of the Secretary in the amount of \$2,056.00 and \$3,114.72 respectively. (*Id.* at ¶¶ 3-5, Exs. B, C.)

On or about May 16, 2006, the FHA insurance on Petitioner's primary note was terminated as the lender notified the Secretary that the the note was paid in full. (*Id.* at ¶ 7, Dillon Decl., ¶ 4.) Therefore, pursuant to the terms and conditions of the Notes, payment is due in full for the debts because the amounts due under the primary note have been paid in full. (*Id.* at ¶¶ 6-8, Ex. A, Dillon Decl., ¶4, Exs. B, C.) The Secretary has made efforts to collect from Petitioner but Petitioner remains delinquent. (*Id.* at ¶ 11, Ex. A, Dillon Decl., ¶ 5.) Petitioner is justly indebted to HUD in the following amounts:

- (a) \$3,012.35 as the unpaid principal balance as of February 28, 2010;
- (b) \$130.52 as the unpaid interest on the principal balance at 4% per annum through February 28, 2010; and
- (c) interest on the principal balance from March 1, 2010 at 4% per annum until paid.

(*Id.*, Ex. A, Dillon Decl., ¶ 5.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated January 20, 2010 was sent to Petitioner. (*Id.* at ¶ 12, Ex. A, 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 with HUD. (*Id.*, at ¶ 13, Ex. A, Dillon Decl., ¶ 7.) As of March 3, 2010, however, Petitioner has not entered into a written repayment agreement. (*Id.*, Ex. A, Dillon Decl., ¶ 8.)

Despite repeated requests, Petitioner has not provided the Secretary with a current pay stub. (*Id.* at ¶ 14, Ex. A, Dillon Decl., ¶ 9.) Pursuant to 31 C.F.R. § 285.11(i)(A), the Secretary proposes that \$87.30 per month, which will liquidate the debt in approximately three years, or 15% of Petitioner's disposable pay, is a reasonable amount to garnish. (*Id.* at ¶ 15, Ex. A, Dillon Decl., ¶ 9.)

Discussion

Petitioner claims that he does not owe the full amount of the alleged debt that is the subject of this proceeding. (Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed February 12, 2010). Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that no debt exists or that the amount of the debt is incorrect.

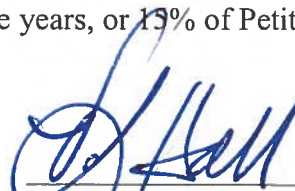
Petitioner has failed, however, to present credible evidence that the alleged debt is not past-due and legally enforceable in the amount claimed by the Secretary, despite being ordered on three occasions to do so. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated February 17, 2010; Order, dated March 16, 2010; Order to Show Cause, dated May 7, 2010.) While the Petitioner has failed to submit any documentary evidence in support of his position, the Secretary has provided a copy of the Subordinate Note ("Note") bearing Petitioner's signature and showing Petitioner's agreement to the terms of the Note. (Sec'y Stat., Ex. B.) One of the agreed upon terms of the Note is that the amount reflected therein, the amount of the alleged debt, is due when the primary note is paid in full. (Id., ¶ 4(A)(i).) Consistent with the terms of the Note, Petitioner's primary note has been paid in full, and as such, payment on the Note in this case is now due.

Without evidence from Petitioner to refute the documentary evidence submitted by the Secretary, Petitioner's claim that the alleged debt is unenforceable lacks credibility due to insufficient evidence. This Office has consistently 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 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 \$87.30 per month, which will liquidate the debt in approximately three years, or 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

July 8, 2010