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

In the Matter of:

Robert Maura,

      Petitioner

HUDOA No.   10-H-NY-AWG60
Claim No.   721005804

Robert Maura
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Pro se

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For the Secretary

DECISION AND ORDER

On February 23, 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 24, 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 April 3, 2004 and June 29, 2006, 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 12, 2010, ¶ 2, Ex. A.) In exchange for foreclosure relief on April 3, 2004 and again on June 29, 2006, Petitioner executed Subordinate Notes in the amount of $6,798.20 and $9,797.41, respectively, in favor of the Secretary. (Sec'y Stat., ¶ 4, Exh. B.)

Paragraph 4 of the Note cites specific events which make the debt become due and payable. One of those events is the payment in full of the primary note, which was insured against default by the Secretary. (Sec'y Stat., ¶ 5, Ex. B, at ¶ 4(A)(i).) On July 31, 2008, the FHA insurance on Petitioner's primary note was terminated when the lender informed the Secretary that the note was paid in full. (Id. at ¶ 6; Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of the United States Department of Housing and Urban Development, HUD, ("Dillon Declaration") ¶ 4, dated March 12, 2010.) "Petitioner has produced no evidence showing that HUD was paid...." (Sec'y Stat., ¶ 8.)

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

(a) $16,595.61 as the unpaid principal balance as of February 28, 2010;
(b) $497.88 as the unpaid interest on the principal balance at 3% per annum through February 28, 2010;
(c) interest on said principal balance from March 1, 2010 at 3% per annum until paid.

(Sec'y Stat., Ex. B; Dillon Decl., ¶ 5.) Despite numerous attempts to obtain Petitioner's current pay stub, she has not provided one to HUD. (Id. at ¶ 9; Dillon Decl. ¶ 9.) The Secretary proposes a repayment schedule of $474.82 per month, which will liquidate the debt in approximately three years, or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 14.)

Discussion

Petitioner claims he does not owe the debt because the debt does not exist. Petitioner states:

> "Robert and Faith Maura (acc # 2009205573B) whom [sic] dispute amount of loan 21,773.46 H.U.D [and] [a]lso request a hearing in regards to all documentation being presented to this case in dispute. The property was sold to Murray Ostager Redstate [sic] of 119 Deepwood Drive Ct. He is responsible for all leins [sic] /loans as said in transactions."

(Petitioner's Request for Hearing, filed February 23, 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 failed, however, to provide the necessary documentation in support of his claim. On three separate occasions, this Office ordered Petitioner to file evidence in support of his claim. (Notice of Docketing, Order, and Stay of Referral, dated February 24, 2010; Order, dated March 19, 2010; Order to Show Cause, dated May 7, 2010.) However, Petitioner failed to comply with the directives in each of these Orders.

This Office has consistently held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable." *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, I find Petitioner's claims fail for lack of proof.

For the reasons set forth above, this Office finds the debt that is the subject of this proceeding to be past due and enforceable in the amount alleged by the Secretary.

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 in the amount of $474.82 per month.

Vanessa L. Hall
Administrative Judge

July 28, 2010