



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

In the Matter of:

Ivan Christie

Petitioner.

HUDOA No. 10-M-CH-AWG35
Claim No. 721006083

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For the Secretary

DECISION AND ORDER

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 (f)(10), on January 20, 2010, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision, unless a wage garnishment order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated January 20, 2010.)

Background

Petitioner executed and delivered to the Secretary a Partial Claim Promissory Note dated November 1, 2000 (“Note”) in the amount of \$ 4,936.51 to secure a partial claim paid on his behalf by the Secretary to pay the arrearages on his primary FHA-insured mortgage and avoid the foreclosure of his primary residence. (Secretary’s Statement (“Sec’y Stat.”), filed February 2, 2010, ¶ 1, Ex. 1; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), ¶ 4.) The Note cites specific events which render the debt due and payable, one of which is the payment in full of the primary note and mortgage insured by the Secretary. (Sec’y Stat., ¶ 2, Ex. 1, ¶ 3A.) On or about January 26, 2009, the FHA mortgage insurance on the first mortgage was terminated, as the lender indicated that the mortgage was paid in full. (Sec’y Stat., ¶ 4; Dillon Decl., ¶ 4.) HUD has attempted to collect on the claim from Petitioner, but Petitioner remains delinquent. (Sec’y Stat., ¶ 5; Dillon Decl., ¶ 5.)

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

- (a) \$4,936.51 as the unpaid principal balance as of December 31, 2009;
- (b) \$86.38 as the unpaid interest on the principal balance at 3.0% per annum through December 31, 2009; and
- (c) interest on the principal balance from January 1, 2010 at 3.0% per annum until paid.

(Sec’y Stat., ¶ 6; Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated December 8, 2009, was mailed to Petitioner. (Sec’y Stat., ¶ 7; 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 under terms acceptable to HUD, but Petitioner failed to enter such an agreement. (Sec’y Stat., ¶ 8; Dillon Decl., ¶ 7.)

A Wage Garnishment Order was issued to Petitioner’s employer on January 8, 2010. (Sec’y Stat., ¶ 9; Dillon Decl., ¶ 8, Ex. A.) HUD attempted to obtain Petitioner’s pay stub, but Petitioner failed to provide one. (Sec’y Stat., ¶ 11; Dillon Decl., ¶ 10.) As a result, the Secretary proposes an administrative wage garnishment in the amount of \$140.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims

Collection Standards, or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 12; Dillon Decl., ¶ 10.)

Discussion

Petitioner claims that the debt at issue is unenforceable or not past due because he filed a Chapter 13 bankruptcy in the District of Texas, Houston Division and was discharged from this debt: "[Petitioner] filed [b]ankruptcy in 1991 and [the] unsecured loans were discharged." (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed January 15, 2010.) 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. Petitioner has filed no documentary evidence to show that the subject debt has been discharged. Moreover, the Secretary correctly asserts in response that because "Petitioner did not sign the Partial Claim Promissory Note until November 1, 2000[,] the 1991 bankruptcy predated the debt and did not discharge this subsequent debt to the Secretary." (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 9.)


Petitioner was specifically ordered to submit documentary evidence to prove that the alleged debt to HUD in this case is unenforceable or not past due on two occasions: first in the Notice of Docketing and, subsequently, in Order dated February 19, 2010. The February 19th Order also stated: "Failure to comply with this Order shall result in a decision based on the documents in the record of this proceeding (emphasis in original)." Petitioner has not responded to any of these orders and has failed to provide documentary evidence to support his claim that the debt has been discharged. Petitioner has provided no evidence that the claim in the amount of \$4,936.51 was paid.

Petitioner has not proved that the debt to HUD is past due or unenforceable. Therefore, I find that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount alleged by the Secretary.

ORDER

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 to the extent authorized by law.



H. Alexander Manuel
Administrative Judge

July 13, 2010