



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

In the Matter of:

Rodney Smith,

Petitioner

HUDOA No. 10-M-NY-AWG108
Claim No. 780710098

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Pro Se

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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 are designated to determine whether the Secretary may collect alleged debts by means of administrative wage garnishment if 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 an undue 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), on February 24, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

Background

On June 27, 2003, Petitioner executed and delivered a Retail Installment Contract-Security Agreement (“Note”) to Clayton Summerville in the amount of \$32,099.69, 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 Sta.”), filed August 4, 2010, ¶ 2; Ex. A, Note.) On June 27, 2003, the Note was assigned by Clayton Summerville to Vanderbilt Mortgage and Finance, Inc. (Sec’y Stat. ¶ 3.) Petitioner failed to make payment on the Note as agreed. Consequently, in accordance with 24. C.F.R. § 201.54, Vanderbilt Mortgage and Finance, Inc. assigned the Note to the United States of America. The Secretary is the holder of the Note on behalf of the United States of America. (Sec’y Stat. ¶ 4 Ex. B, Assignment.)

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

- (a) \$17,726.22 as the unpaid principal balance as of July 31, 2010;
- (b) \$1,129.18 as unpaid penalties as of July 31, 2010;
- (c) \$141.33 as the unpaid administrative costs as of July 31, 2010;
- (d) \$1,137.72 as the unpaid interest on the principal balance at 3% per annum through July 31, 2010; and
- (e) Interest on said principal balance form August 1, 2010, at 3% per annum until paid.

(Dillon Decl., ¶ 5). A Notice of Intent to Initiate Administrative Wage Garnishment (“Notice”) was sent to Petitioner on May 9, 2010. (Sec’y Stat. ¶ 6; Dillon Decl. ¶ 5.) Petitioner was afforded the opportunity to enter into a repayment agreement but did not do so. As of August 3, 2010, Petitioner has not entered into a written repayment agreement in response to the Notice.(Sec’y Stat. ¶ 7; Dillon Decl. ¶ 6.)

The Petitioner has not provided the Secretary with a current pay stub. Several attempts were made to obtain Petitioner’s paystub. (Sec’y Stat. ¶ 8; Dillon Decl ¶7.) The Secretary’s proposed repayment schedule is \$560.00 per month which would liquidate the debt in approximately three years. (Sec’y Stat. ¶ 9; Dillon Decl. ¶ 8.)

Discussion

Petitioner does not dispute the existence of this debt. Specifically, Petitioner states: “\$30.00 weekly is what I can afford.” (Petitioner’s Hearing Request (“Pet’r’s Hr’g Req.”), dated July 20, 2010.) Petitioner is permitted to present evidence that no debt exists or that the amount is incorrect. 31 C.F.R. § 285.11(f)(8)(ii).

This Office has issued two separate Orders requiring Petitioner to file his documentary evidence proving that the debt in this case is not past-due or legally enforceable. (See, Notice of Docketing, Order, and Stay of Referral, issued July 27, 2010; Order, issued September 29, 2010.) The Order issued on September 29, 2010 specifically 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 failed to comply with both Orders.

This Office has held that "[a]ssertions without evidence are not sufficient 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). In order to prove that the debt in this case has been satisfied, Petitioner must file either a release in writing from the lender discharging Petitioner's obligation, or evidence of valuable consideration accepted by the lender, which would indicate the lender's intent to release Petitioner of his obligation. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Petitioner has not filed such evidence and, therefore, has failed to comply with the Orders issued by this Office. Since Petitioner does not offer any evidence that would prove that the debt is unenforceable, I find that Petitioner's argument fails for want of proof.

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 to the extent authorized by law.



H. Alexander Manuel
Administrative Judge

December 21, 2010