



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

In the Matter of:

Terry Vanderbilt
Petitioner

HUDOA No. 10-M-NY-AWG24
Claim No. 721001930-0A

Terry Vanderbilt
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For Petitioner

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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 court 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. 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 January 5, 2010, this court 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 December 29, 2004, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") in the amount of \$12,002.47, in exchange for foreclosure relief being granted by the Secretary. (Secretary's Statement ("Sec'y Stat."), filed January 20, 2010, ¶ 2, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated January 19, 2010, ¶ 4, Exhibit A, Note.) Paragraph 3 of the Note cites specific events which make the debt become due and payable. (Sec'y Stat., ¶ 3, Dillon Decl., ¶ 4, *See* Note at ¶ 3(A)(i)). One of those events is the payment in full of the primary note, which was insured against default by the Secretary. (*Id.*)

On or about November 18, 2005, the FHA insurance on Petitioner's primary note was terminated when the lender informed the Secretary that the primary note was paid in full. (Sec'y Stat., ¶ 4, Dillon Decl., ¶ 4.) Upon payment in full of the primary note, Petitioner was to payoff the Note by sending payment to HUD. (Sec'y Stat., ¶ 5.) Petitioner failed to make payment on the Note, and consequently, Petitioner's debt to HUD became delinquent. (Sec'y Stat., ¶ 6.)

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. (Sec'y Stat., ¶ 7, Dillon Decl., ¶ 5.) Petitioner is indebted to the Secretary in the following amounts:

- (a) \$10,100.58 as the unpaid principal balance as of December 30, 2009;
- (b) \$0 as the unpaid interest on the principal balance at 4% per annum through December 30, 2009; and
- (c) interest on said principal balance from December 31, 2009 at 4% per annum until paid.

(*Id.*)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner dated September 24, 2009. (Sec'y Stat., ¶ 8, Dillon Decl., ¶ 7.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec'y Stat., ¶ 9, Dillon Decl., ¶ 8.) As of January 19, 2010, Petitioner had not entered into a proposed repayment agreement. (*Id.*) However, by letter dated November 24, 2009, Petitioner proposed payments of \$125.00 per month. (*Id.*)

Based on a review of Petitioner's current financial situation, the Secretary proposed a weekly repayment schedule of \$28.85, or \$125.00 per month. (Sec'y Stat., ¶ 10, Dillon Decl., ¶ 9.)

Discussion

Petitioner does not deny the existence or the validity of the debt that is the subject of this proceeding. Petitioner instead challenges the amount of the proposed wage garnishment. Petitioner states: “My wife’s [p]ay [c]heck is being [g]arnished for 15%. My wages have been reduced by 36% in the last 36 months. We may be able to pay \$75.00 a month. Thnx [sic]” (Petitioner’s Hearing Request (“Pet’r Hearing Req.”), dated October 14, 2009)

Petitioner also states that his “property taxes are now at \$9000 which is almost triple what we were paying when we moved into this house.” (Petitioner’s October Letter dated October 18, 2009.) Petitioner is willing to pay his debt, but seeks to pay \$75 a month for a 24 month period, and to then re-address his financial situation. (*Id.*) In support of his request, Petitioner attached a financial worksheet. According to Petitioner, his proposed payment schedule was denied by HUD. He then offered to pay \$125.00 per month over a 24 month period. Letter dated November 20, 2009. (Petitioner’s November Letter, dated November 20, 2009.)

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, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause financial hardship. On January 5, 2010, this court ordered Petitioner to file documentary evidence no later than January 28, 2010, to prove that repayment of the debt would cause him financial hardship. (Notice of Docketing, Order, and Stay of Referral (“Order”), dated January 5, 2009.) Petitioner did not comply with the Order.

This court also ordered the Secretary to file the proposed repayment schedule required under 31 C.F.R. § 285.11(e)(2)(ii), as well as documentary evidence proving that Petitioner’s alleged debt to HUD is enforceable and past due. (*Id.*) The Secretary filed documentary evidence in support of the claim against Petitioner for the debt owed to HUD. (Sec’y Stat.)

Again, on February 18, 2010, this court ordered Petitioner to submit documentary evidence proving that repayment would cause him a financial hardship. (February Order, dated February 18, 2010.) The February Order further stated that “failure to comply with this Order shall result in a decision based on the documents in the record of this proceeding.” (*Id.*) Petitioner failed to respond to this Order as well.

This Office has previously held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or unenforceable.” *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, in the absence of documentary evidence to support Petitioner’s assertion that the alleged debt would cause a financial hardship for him, this Office finds that Petitioner’s claim fails for lack of proof.

Based on a review of Petitioner’s current financial situation, the Secretary has proposed a repayment schedule of \$125.00 per month. (Sec’y Stat., ¶ 10, Dillon Decl., ¶ 9.)

This is the amount that Petitioner previously agreed to pay. (Petitioner's November Letter, dated November 20, 2009.) Based on the parties' agreement, and there being no other substantial evidence to prove financial hardship, I find that Petitioner is liable for the full amount of debt claimed by HUD in this case.

ORDER

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of 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 and Petitioner's wages shall be garnished at a rate of \$125.00 per month.

ORDERED this 24th day of March, 2010.



H. Alexander Manuel
Administrative Judge