



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

In the Matter of:

**Rodrigue A. Lodin**

Petitioner

HUDOA No. 10-M-NY-AWG31  
Claim No. 2008062711A

Rodrigue A. Lodin  
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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 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 13, 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.

### Background

On April 28, 2003, Petitioner executed and delivered to the Secretary a Subordinate Note (“Subordinate Note”) in the amount of \$20,888.28, in exchange for foreclosure relief being granted by the Secretary. (Secretary’s Statement (“Sec’y Stat.”), filed February 2, 2010, ¶ 2, Ex. A.) The Subordinate Note cites specific events that would cause the debt to become due and payable. (*Id.* at ¶ 3, Ex. A, ¶ 4.) One of these triggering events was when the Petitioner paid all amounts due under the primary note insured by the Secretary. (*Id.*) On or about April 2, 2004, the FHA insurance on the primary note was terminated when the lender informed HUD that the mortgage had been paid in full. (*Id.*) Thus, the Subordinate Note became due and payable in full at that time. (*Id.*)

The Secretary has attempted to collect the amounts due under the Subordinate Note, but Petitioner remains delinquent. (*Id.* at ¶ 6.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

- (a) \$20,591.38 as the unpaid principal balance as of January 26, 2010;
- (b) \$1,712.91 as the unpaid interest on the principal balance at 4% per annum through January 26, 2010; and
- (c) interest on said principal balance from January 27, 2010 at 3% per annum until paid.

(*Id.* at ¶ 7; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated February 1, 2010, ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated October 21, 2009 was sent to Petitioner. (Sec’y Stat., ¶ 8; Dillon Decl., ¶ 5.) 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 mutually agreeable terms. (Sec’y Stat., ¶ 9; Dillon Decl., ¶ 6.) As of February 1, 2010, Petitioner has not entered into a written repayment agreement in response to the notice. (Sec’y Stat., ¶ 9; Dillon Decl., ¶ 6.)

A Wage Garnishment Order dated November 20, 2009 was issued to Petitioner’s employer by the Department of Treasury. (Sec’y Stat., ¶ 10; Dillon Decl., ¶ 7.) Based on the issuance of the Wage Garnishment Order, Treasury received four garnishment payments totaling \$540.63, of which two payments totaling \$255.55 have been forwarded to HUD and are reflected in the outstanding balance above. (Sec’y Stat., ¶ 11; Dillon Decl., ¶ 8.)

Based on Petitioner's letter dated January 27, 2010, the Secretary agreed to a weekly repayment schedule of \$115.00. (Sec'y Stat., ¶ 12, Dillon Decl., ¶ 9, Ex. A.) The Secretary has advised the Treasury to modify its existing wage garnishment order to Petitioner to reflect a weekly wage garnishment of \$115.00. (Dillon Decl., ¶ 9.)

### Discussion

Petitioner argues that the alleged debt to HUD is unenforceable because (1) the Secretary's proposed repayment schedule would result in financial hardship for Petitioner; and (2) Petitioner does not owe the full amount of the debt. Regarding financial hardship, Petitioner states, "This garnishment to my wages is going to put me in financial hardship with my current mortgage and other necessities of my family." (Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed January 13, 2010, 2010.) Petitioner also disputes the amount of the debt: "The original loan was \$20,000 (HUD) which when refinanced should've been put back into the new mortgage. This was an oversight that I have been trying to rectify by once again refinance with an FHA loan." (*Id.*)

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 13, 2010, this Court ordered Petitioner to file documentary evidence to prove that all or part of the alleged debt to HUD in this case is either unenforceable or not past due. (Notice of Docketing, Order, and Stay of Referral, dated January 13, 2010.) Petitioner was also ordered to file documentary evidence proving that repayment of the debt would cause him financial hardship. (*Id.*) Petitioner failed to comply with this Order.

Additionally, this Court ordered the Secretary to file the proposed repayment schedule required under 31 C.F.R. § 285.11(3)(2)(ii), as well as documentary evidence proving that Petitioner's alleged debt to HUD is enforceable and past due. (*Id.*) On February 2, 2010, the Secretary filed the Secretary's Statement, setting forth the documentary evidence in support of the claim against Petitioner for the debt owed to HUD. (Sec'y Stat.)

On February 18, 2010, a second Order was issued ordering Petitioner to file the same information sought in the Notice of Docketing, Order, and Stay of Referral. (Order, dated February 18, 2010.) This Order 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 comply with this Order as well.

To date, Petitioner has failed to comply with all of the Orders issued by this Office to provide evidence that would prove that the subject debt is unenforceable or not past due, or provide evidence to support any claim that repayment of the debt would create a financial hardship for him. Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing office, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including

*a determination against a noncomplying party* (emphasis added).

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 he does not owe the alleged debt, this Office finds that Petitioner’s claim fails for lack of proof. Furthermore, Petitioner’s non-compliance with the Orders issued by this Office also supports finding against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations. (*Id.*)

The Secretary, however, states in his Statement that Petitioner has proposed a wage garnishment amount of \$115.00 weekly. (Sec’y Stat., ¶ 12, Dillon Decl., ¶ 9, Ex. A (Petitioner’s Letter (“Pet’r. Ltr.”), dated January 27, 2010.)) In his letter, Petitioner states, “15% of [Petitioner’s] weekly wages is currently causing a slight shortage of cash flow to essential household necessities. We are asking if possible that a flat amount of \$115 weekly be taken out instead. This difference of about \$200 a month really makes a difference when living by paychecks and maintaining an average household. Please consider this request as we will be trying for other means to repay this debt in the meantime.” (Pet’r. Ltr.) Accordingly, the Secretary has agreed to the proposed weekly repayment schedule of \$115.00.

**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 in the amount of \$115.00 weekly.



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H. Alexander Manuel  
Administrative Judge

July 28, 2010