



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

In the Matter of:

WALTER A. ROGERS,

Petitioner.

HUDOA No. 10-M-NY-AWG61
Claim No. 52-0883319YD

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Pro se

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For the Secretary

DECISION AND ORDER

On March 1, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to 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 the alleged debt 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 March 3, 2010, this Office stayed the issuance of a wage

withholding order until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral, dated March 25, 2010.)

Background

On March 23, 1992, Petitioner executed and delivered to NC Mobile Hm Corp/Lifestyles, a Retail Installment Contract (“Note”) in the amount of \$21,210.80, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. §1703. (Sec’y Stat. ¶ 2; Sec’y Stat. Ex. A at 1.) Contemporaneously, on March 23, 1992, the Note was assigned by NC Mobile Hm Corp/Lifestyles to Logan-Laws Financial Corporation. (Sec’y Stat. ¶ 3.) Logan-Laws Financial Corporation subsequently went out of business, and the Government National Mortgage Association (“GNMA”) took over its loans. (Sec’y Stat. ¶ 4; Sec’y Stat. Ex. B ¶ 4.) GNMA is a division of HUD and the rightful holder of the Note. (Sec’y Stat. ¶ 5.)

HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec’y Stat. ¶ 6.) HUD alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$3,459.86 as the unpaid principal balance;
- (b) \$311.01 as the unpaid interest on the principal balance at 13% per annum through July 23, 2004; and
- (c) interest on said principal balance from July 24, 2004 until paid.

(Sec’y Stat. ¶ 6; Sec’y Stat. Ex. B ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated January 29, 2010 was sent to Petitioner. (Sec’y Stat. ¶ 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 with HUD under mutually agreeable terms. (Sec’y Stat. ¶ 8.) On March 18, 2010, GNMA sent Petitioner a letter requesting financial information for a repayment plan. (Sec’y Stat. Ex. B ¶ 7.) Petitioner has not entered into a written repayment agreement with HUD. (Sec’y Stat. ¶ 8.) The Secretary’s proposed repayment schedule is 15% of Petitioner’s disposable pay. (Sec’y Stat. ¶ 9.)

Discussion

In Petitioner’s Hearing Request, Petitioner disputes the existence of the debt but does not submit any evidence to support his claim. (Pet’r’s Hr’g Req.) 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). In the Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), issued to Petitioner on March 3, 2010, this Office ordered Petitioner to “file documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due” no later than April 2, 2010 (Notice of Docketing at 2.) The Secretary was ordered to file a proposed repayment schedule and documentary evidence proving that Petitioner’s debt was enforceable and past due no later than March 26, 2010. (*Id.*)

On March 24, 2010, the Secretary filed a Motion for Extension on the grounds that GNMA was awaiting Petitioner's response proposing an acceptable repayment plan. (Sec'y Mot. for Extension.) On March 25, 2010, this Office granted the Secretary's Motion for Extension and ordered the Secretary to file documentary evidence on or before April 26, 2010. (Ruling and Order on Sec'y Mot. for Extension of Time, dated March 25, 2010. Petitioner was ordered to file his documentary evidence on or before May 3, 2010. (*Id.*) The Secretary filed a brief and documentary evidence on April 20, 2010. Petitioner did not respond to either order contained in the Notice of Docketing and the Ruling and Order. On May 6, 2010, this Office again ordered Petitioner to file documentary evidence to support his argument that the debt does not exist. (Order, dated May 6, 2010.) The Order required Petitioner to file his documentary evidence on or before May 18, 2010 and stated that, "[f]ailure to comply with this Order shall result in a decision based on the documents in the record of this proceeding." (emphasis in original) (*Id.* at 2.)

Petitioner has failed to submit any evidence that the alleged debt is unenforceable or not past due and has, therefore, failed to comply with the Orders issued by this Office. 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." Troy Williams, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing, Bonnie Walker, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). 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

August 4, 2010