



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

In the Matter of:

**Richard Akapo,**  
Petitioner

HUDOA No. 10-M-NY-AWG83  
Claim No. 780713993

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Pro se

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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 May 11, 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 October 10, 2005, Petitioner executed and delivered a Note (“Note”) to Domestic Bank in the amount of \$22,000.00, 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 Stat.”), filed May 26, 2010, ¶ 2, Ex. A.) When Petitioner failed to make payment on the Note as agreed, on July 3, 2009, Domestic Bank assigned the Note to the United States of America in accordance with 24 C.F.R. § 201.54. (*Id.* at ¶ 3, Ex. B.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (*Id.* at ¶ 4.) 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) \$17,227.30 as the unpaid principal balance as of April 30, 2010;
- (b) \$43.07 as the unpaid interest on the principal balance at 3% per annum through April 30, 2010; and
- (c) interest on the principal balance from May 1, 2010 at 3% per annum until paid.

(*Id.*; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated May 24, 2010, ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated April 12, 2010 was sent to Petitioner. (Sec’y Stat., ¶ 5; 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., ¶ 6; Dillon Decl., ¶ 6.) As of May 24, 2010, Petitioner has not entered into a written repayment agreement in response to the notice. (Sec’y Stat., ¶ 6; Dillon Decl., ¶ 6.)

A Treasury Offset payment of \$6,257.00 was received from Petitioner and posted to HUD’s account on April 23, 2010 and has been credited towards the unpaid principal balance due. (Sec’y Stat., ¶ 10; Dillon Decl., ¶ 8.) Attempts to contact Petitioner to obtain a current pay stub were unsuccessful. (Sec’y Stat., ¶ 11; Dillon Decl., ¶ 9.) The Secretary proposes a monthly repayment schedule of \$478.54, which will liquidate the debt in approximately three years, or 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 12; Dillon Decl., ¶ 9.)

### Discussion

Petitioner challenges the enforceability of the debt by arguing that (1) he does not owe the full amount of the debt, and (2) an administrative wage garnishment would cause financial hardship. (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed May 6, 2010.)

First, Petitioner disputes that he owes the full amount of the debt: "I paid 3 years[,] and the amount of the original loan was \$20,000.00." (Pet'r Hr'g Req.) Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner has the burden of showing, by a preponderance of the evidence, that the amount of the debt is incorrect.

In response, the Secretary asserts that the amount of the original loan was \$22,000, not \$20,000, and that prior to default, Petitioner made a total of 34 payments to Domestic Bank which reduced the amount of the debt to \$21,200.24. (Sec'y Stat., ¶¶ 8, 9.) As support, the Secretary has filed a copy of the Note signed by Petitioner showing the original amount borrowed as \$22,000, and a copy of the Title I Claim for Loss submitted by Domestic Bank, the prior holder of the Note, and a HUD's internal T.I.I.S. Claim Inquiry printout, both confirming the original loan amount of \$22,000, not \$20,000. (*Id.*, Ex. A; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 7, Exs. B, C.) In addition, both the Title I Claim for Loss and the T.I.I.S. Claim Inquiry printout reflect that prior to default a total of 34 payments were credited to the debt reducing the amount owing to \$21,200.24. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 7, Exs. B, C.)

With his statement and supporting documents, the Secretary has met his initial burden of proof to show the amount of the debt. Petitioner, on the other hand, has failed to produce documentary evidence that the original loan amount of \$22,000.00 was incorrectly calculated. Petitioner must provide more than a mere allegation that the debt does not exist, but must provide some documentary evidence supporting his claim. Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Other than his allegation, Petitioner has not produced any documentary evidence supporting his claim that the amount of the debt alleged by the Secretary is incorrect. Therefore, I find that Petitioner is justly indebted to HUD in the amount alleged by the Secretary.

Next, Petitioner claims that the terms of the proposed repayment schedule would create a financial hardship: "I am writing to express my present financial hardship that is affecting my monthly repayment of home loan I obtained from your financial institution three years ago." (Petitioner's Letter with Bills and Payments, Receipts and Bi-Weekly Pay Statements ("Pet'r Ltr."), filed June 14, 2010.) Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner "may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law."

Petitioner provided this Office with a copy of his bi-weekly pay statements for the period ranging from December 22, 2008 to December 20, 2009. (Pet'r Ltr., Attach.) Petitioner's bi-weekly pay statements for the three most current pay periods beginning November 9, 2009 and ending December 20, 2009, where Petitioner earned his current pay rate of \$24.73 per hour, indicate that his gross bi-weekly pay averaged \$2,548.59. (*Id.*) Petitioner's gross monthly pay for the same period averaged \$5,097.19. (*Id.*) The Secretary is authorized to garnish "up to 15%

of the debtor's disposable pay," which is determined "after the deduction of health insurance premiums and any amounts required by law to be withheld . . . [including] amounts for deductions such as social security taxes and withholding taxes . . ." 31 C.F.R. §§ 285.11(c) and (i)(2)(i)(A). After subtracting allowable deductions for federal tax, \$169.78; FICA, \$151.70; Medicare, \$35.48; state tax, \$112.69; and health insurance \$65.00, Petitioner is left with a disposable pay of \$2,013.95 bi-weekly or \$4,027.89 monthly. (*Id.*)

The documentary evidence submitted by Petitioner shows records of payment for the following essential household expenses for which this office will credit Petitioner: water, \$100.26 (monthly); gas, \$114.07 (monthly average); electric, \$159.17 (monthly average); groceries and gas, \$75.87 (monthly average); Home Depot store card payment, \$165.00 (monthly); car loan payment, \$253.84 (monthly); and mortgage, \$1565.00 (monthly). The essential household expenses total \$2433.22 per month.

Petitioner also asserts that he is responsible for six household members and aged parents: "Responsibilities of my family of six and my aged parents are all on me." (Pet'r Ltr.) Petitioner, however, has not submitted any documentary evidence that shows that he has financially supported his family of six or his aged parents.

Petitioner's claims regarding the following expenses are not credited by this Office because Petitioner has not submitted sufficient documentary evidence to establish that these payments are essential monthly household expenses: tithe, DMV tax payment, kerosene and heater, P.O. Box fee, car repair and purchase home repair. Petitioner's check images and receipts, including child care, credit card payments, car insurance fees and tithes, during the period ranging from January 5, 2006 to March 30, 2008 are not credited by this Office because Petitioner has not submitted sufficient documentary evidence to establish a recent record of payments.

Petitioner's monthly disposable pay of \$4,027.89 less his essential monthly household expenses of \$2,433.22 leaves a remaining balance of \$1,594.67 per month. A 15% garnishment rate of Petitioner's monthly disposable pay, as proposed by the Secretary, would equal \$604.18, and leave Petitioner with a \$990.49 balance per month. The balance would still enable Petitioner to meet his essential household expenses. Therefore, I find that an order for administrative wage garnishment of Petitioner's disposable income at a rate of 15% would not create a financial hardship for Petitioner within the meaning of 31 C.F.R. § 285.11(f)(8)(ii).

#### **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**. For the reasons stated above, 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 15% of Petitioner's monthly disposable pay.

*H. Alexander Manuel*

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H. Alexander Manuel  
Administrative Judge

June 25, 2010