



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

In the Matter of:

Willie J. Marshall,
Petitioner

HUDOA No. 10-M-NY-AWG97
Claim No. 780507486

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Pro Se

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DECISION AND ORDER

On June 21, 2010, 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 March 19, 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.

Background

On April 14, 1999, Petitioner executed and delivered a Note to TMS Mortgage Inc., dba The Money Store in the amount of \$14,000, 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 July 2, 2010, ¶ 2, Ex. A.) Petitioner failed to make payment on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54, on June 13, 2002, HomeEq Servicing Corp. successor by merger to TMS Mortgage Inc. dba The Money Store 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. (*Id.* at ¶ 3, Ex. B.)

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. As a result, Petitioner remains in default on the Note. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$11,241.49 as the unpaid principal balance as of June 30, 2010;
- (b) \$28.10 as the unpaid interest on the principal balance at 3% per annum through June 30, 2010; and
- (c) interest on said principal balance from July 1, 2010 at 3% per annum until paid.

(Sec'y Stat., ¶ 4; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated February 8, 2010 was sent to Petitioner. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 5.) The co-debtor, Janice Moderia Marshall, filed Chapter 13 bankruptcy on December 2, 2003. The case was discharged on April 10, 2009. When the discharge was ordered the stay was lifted and the Petitioner was no longer protected. There is no evidence that the Petitioner has filed his own bankruptcy petition. (Sec'y Stat., ¶ 8; Dillon Decl., 6.) 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. As of July 1, 2010, Petitioner has not entered into a written repayment agreement in response to the notice. (Sec'y Stat., ¶ 6; Dillon Decl., ¶¶ 7 & 8.)

As of July 1, 2010, Petitioner has not complied with the Secretary's request to provide proof of income. (Dillon Decl., ¶ 9.) Accordingly, the Secretary's proposed repayment schedule is \$313.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 9.)

Discussion

Petitioner argues that the alleged debt to HUD does not exist. Petitioner writes, “Request that the Administrative Wage Garnishment be Suspended. Request that all Money be refunded Federal and what was deducted from his pay at Windamir.” (Petitioner’s Request for Hearing (“Pet’r Hr’g Req.”), filed June 21, 2010.)

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 June 22, 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 June 22, 2010.) Petitioner was also ordered to file documentary evidence proving that repayment of the debt would cause her 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 July 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 September 29, 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 September 29, 2010.) This Order stated that “[f]ailure to comply with this Order may 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 her. 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 she 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.*)

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 to the extent authorized by law.



H. Alexander Manuel
Administrative Judge

December 15, 2010