



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

In the Matter of:

Ernest L. Moss,
Petitioner

HUDOA No. 11-H-CH-AWG13
Claim No. 7-71131833

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Pro se

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For the Secretary

DECISION AND ORDER

On October 12, 2010, Petitioner filed a request for 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” or “Secretary”). 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 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), on October 21, 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 (“Notice of Docketing”), dated October 21, 2010.)

Background

On March 9, 1997, Petitioner executed and delivered to Empire Funding Corporation an installment note in the amount of \$4,480.00 for a home improvement loan that 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 December 1, 2010, ¶ 2, Ex. A.) Petitioner failed to make payments as agreed in the note. Consequently, Empire Funding Corporation assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54. The Secretary is the holder of the note on behalf of the United States of America. (Sec’y. Stat. ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but the Petitioner remains default. The Secretary has filed a statement in support of his position that Petitioner is justly indebted to HUD in the following amounts:

- (a) \$4,448.45 as the unpaid principal balance as of October 31, 2010;
- (b) \$501.04 as the unpaid interest on the principal balance at 5% per annum through October 31, 2010; and
- (c) interest on said principal balance from November 1, 2010 at 5% per annum until paid.

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

On September 27, 2010, a Notice of Intent to Initiate Wage Garnishment was sent to Petitioner. (Sec’y Stat., ¶ 6; 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 under terms agreeable to HUD. As of this date, Petitioner has not entered into a written repayment agreement based on the September 27, 2010 Notice. (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 6.)

Several attempts were made to obtain a current pay stub from the Petitioner. As of the date of this Secretary’s Statement, Petitioner has not provided HUD with a current pay stub. (Sec’y Stat., ¶ 9; Dillon Decl., ¶ 8.) The Secretary’s proposed repayment schedule is \$137.00 per month or 15% of Petitioner’s disposable income. (Id.)

Discussion

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 or that the amount of the alleged debt is incorrect.

First, Petitioner disputes the terms of the proposed garnishment amount. (Petitioner’s Hearing Request (“Pet’r’s Hr’g Req.”), filed, October 12, 2010.) Petitioner has not submitted documentary evidence that substantiates the basis for challenging the terms of the proposed garnishment amount. Petitioner, on three occasions, was ordered by this Office to file

documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due. (Notice of Docketing, Order, and Stay of Referral, dated October 21, 2010; Order, dated December 7, 2010; and Order to Show Cause, dated December 29, 2010.) However, Petitioner failed to comply with any of the orders issued, and thus has failed to provide sufficient evidence in support of his position. The Secretary nevertheless has filed, as support, his Statement along with a copy of the Retail Installment Contract and Truth in Lending Disclosure (“Installment Contract”) for review by this Office. The Secretary contends that in the Installment Contract the Petitioner agreed that, “[u]pon default, [the] Seller may declare the entire remaining unpaid portion of the obligations under this Contract immediately due and payable.” (Sec’y Stat., Ex. B, Attach. Install Contract, p. 2.)

The Secretary also produced for review by this Office, a copy of the Declaration from the Director of HUD’s Asset Recovery Division, in which it was substantiated that, “Several attempts were made to obtain a current pay stub from Petitioner,” and that Petitioner to date, “has not provided HUD with a current pay stub.” (Sec’y Stat., Exh. B, ¶ 8.)

Upon reviewing the documentary evidence submitted by the Secretary, it is evident from the record that Petitioner not only agreed to pay the alleged debt but that Petitioner also was given the opportunity to produce the necessary documentation to prove the basis for challenging the terms of the garnishment amount.

While Petitioner may challenge the terms of the proposed garnishment amount, the burden of proof rests with Petitioner either to produce evidence that refutes or rebuts the evidence presented by the Secretary, or to otherwise prove the basis for challenging the terms of the proposed garnishment amount. Petitioner has failed to meet that burden in this case. This Office has maintained consistently that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996.) As a result, Petitioner’s claim that challenges the proposed terms of the repayment of the garnishment amount fails for lack of proof.

Second, Petitioner’s allegation that this claim is barred by the statute of limitation[s] is without merit because there is no statute of limitations for administrative wage garnishment cases. In the case of *In Re Douglas P. Hansen* (Decision Order and Reconsideration), HUDBCA No. 06-A-CH-AWG03 at 3 (February 13, 2007), the Office of Appeals adopted the holding of the U.S. Supreme Court in *BP America Prod. Co v. Burton*, 127 S.Ct 638,643 (2006) and reversed its decision in the initial *Hansen* decision by finding that “no statute of limitations exists in administrative proceedings without the inclusion of a clear, legislative time period by Congress.” See *BP America Prod. Co. v. Burton*, 127 S. Ct. 638 (2006); *In Re Karen T. Jackson* (Decision and Order), HUDOA No. 09-H-NY-AWG87 at 3 (June 3, 2009). Furthermore, the controlling statute in the instant case, 31 U.S.C. § 3720D, does not contain a time limitation in which the government is required to bring such administrative actions. No statute of limitations bars agency enforcement action by means of administrative wage garnishment. (Id.) Therefore, I find that the debt that is the subject of this proceeding is not barred by the statute of limitations.

As a final point, Petitioner has also failed to comply with all of the Orders issued by this Office to provide evidence that would more sufficiently prove that the subject debt is unenforceable. 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 officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*. (emphasis added).

Accordingly, I find that Petitioner's non-compliance to the Orders issued by this Office also provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding exists and is enforceable in the amount alleged by the Secretary.

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 at 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

February 15, 2011