



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

In the Matter of:

Michael C. Perry,
Petitioner

HUDOA No. 11-H-NY-AWG139
Claim No. 721006799

DECISION AND ORDER

On August 31, 2011, 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 a mechanism for the collection of debts owed to the United States Government.

The administrative judges of this Court 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. 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 September 8, 2011, this Court stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated September 8, 2011.)

Background

On or about February 1, 2002, the HUD-insured loan on Petitioner’s home was in default, and Petitioner was threatened with foreclosure. (Secretary’s Statement (“Sec’y Stat.”), filed September 27, 2011, ¶ 2, Ex. A.) HUD advanced funds to the FHA insured lender to bring Petitioner’s mortgage current. On February 1, 2002, Petitioner executed a Subordinate Note (“Note”) in the amount of \$8,424.00 in favor of the Secretary. (Sec’y Stat., ¶ 4.) The Note cited specific events that made the debt become due and payable, one of these events being the payment in full of the primary note. (Sec’y Stat., ¶ 5, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD (“Dillon Decl.”), dated September 23, 2011, ¶ 4.) On or about December 12, 2005, the FHA Insurance on the first mortgage was terminated, as the lender indicated the mortgage was paid in full. (*Id.* at ¶ 4).

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington DC 20410 or any such other place as Lender may designate in writing by notice to Borrower. Petitioner failed to make payment on the Note at the place and in the amount specified above. (Sec'y Stat., ¶ 8, Dillon Decl., ¶ 5).

HUD has attempted to collect on the claim from Petitioner, but Petitioner remains delinquent. Petitioner is indebted to HUD on the claim in the following amounts:

- (a) \$8,424.00 as the unpaid principal balance as of September 12, 2011;
- (b) \$63.18 as the unpaid interest on the principal balance at 1% per annum through September 12, 2011;
- (c) \$270.60 as the unpaid penalties and administrative costs on the balance through September 12, 2011; and
- (d) interest on said principal balance from September 13, 2011, at 1% per annum until paid.

(Sec'y Stat., ¶ 9, Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated July 18, 2011 was sent to Petitioner. (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 under the terms acceptable to HUD. As of September 23, 2011, Petitioner has not entered into a written repayment agreement. (Sec'y Stat., ¶11; Dillon Decl., ¶ 8.) The Secretary's proposed repayment schedule is \$175.33 bi-weekly or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 17, Dillon Decl., ¶ 10.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(i), the Secretary has the initial burden of proving the existence or amount of the alleged debt. The burden then shifts to the Petitioner to show, by a preponderance of the evidence, that no debt exists or that the amount of the alleged debt is incorrect. Petitioner may also introduce evidence that the terms of the proposed repayment schedule are unlawful or would cause him financial hardship or that the debt is unenforceable by operation of law. 31 C.F.R. § 285.11(f)(8)(ii).

Here, Petitioner challenges the existence and amount of the debt as claimed by the Secretary claiming that it was "discharged on July 12, 2007." (Petitioner's Hearing Request "(Pet'r's Hr'g Req.)", dated August 31, 2011.) Petitioner further challenges "the interest amount that has accrued" and further claims that "I lost the home to foreclosure in 2007. I never received any notification of this debt until this year. I am willing to make payments, but request that the amount owed be closer to the amount I actually borrowed." (Petitioner's Letter via e-mail ("Pet'r's E-mail"), filed February 17, 2012.)

While Petitioner asserts that both the amount owed and the amount of interest accrued are uncertain, he has failed to meet his burden of proof by failing to provide the documentary

evidence necessary to prove his case. Mere allegations alone are insufficient as evidence to substantiate Petitioner's claims. The Secretary argues, however, that Petitioner remains legally obligated to pay the alleged debt. As support, the Secretary provided a copy of the Note bearing Petitioner's signature, in which Petitioner accepted and agreed to the terms and covenants of the contract. (Sec'y Stat., Ex. 1; Dillon Decl., ¶ 3.) Petitioner agreed that: "In return for a loan received from Lender, Borrower promises to pay the principal sum of EIGHT THOUSAND FOUR HUNDRED TWENTY-FOUR DOLLARS AND 00/100 CENTS dollars (U.S. \$ 8,424.00), to the order of the Lender." (*Id.*) The language of the agreement also identifies the Lender to be "the Secretary of Housing and Urban Development and its successors and assigns." (Sec'y Stat., Ex. B, ¶ 1, p.1.), and further provides that "Any one person signing this Note may be required to pay all of the amounts owed under this Note." (*Id.*, ¶ 7, p. 2.)

Without evidence from Petitioner to otherwise refute or rebut the evidence presented by the Secretary, Petitioner's claim must fail for lack of sufficient proof and, as a result, the Court should find that Petitioner remains legally obligated to pay the debt that is the subject of this proceeding. This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable." *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, I find that Petitioner's claim challenging the existence or amount of the alleged debt fails for lack of sufficient proof.

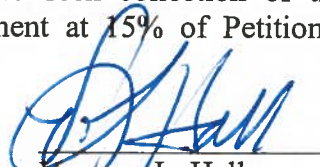
Petitioner next states that he is "willing to set up a payment plan through my bank. I would prefer that my wages not be garnished." (Pet'r's E-mail.) While Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding 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

March 12, 2012