



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

In the Matter of:

O.C. Payne,
Petitioner

HUDOA No. 11-H-NY-AWG22
Claim No. 78-0143209-0A

O.C. Payne
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Lynn, MA 01905

Pro se

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For the Secretary

DECISION AND ORDER

On November 3, 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”). 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 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. 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 November 9, 2010, this Office 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 November 9, 2010.)

Background

Petitioner executed and delivered a Note to Domestic Loan and Investment Bank (“Domestic Bank”) in the amount of \$15,500.00, 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 November 24, 2010, ¶ 2, Ex. A.) Upon default by Petitioner, Domestic Bank brought suit against Petitioner and on October 21, 1998, obtained a judgment against Petitioner in the amount of \$16,736.89. (Id.) After default by Petitioner, the Note and Money Judgment were assigned to HUD by Domestic Bank, under the regulations governing the Title I Insurance Program. (Sec’y Stat., ¶ 4, Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, Financial Operations Center of HUD (“Porter Decl.”), dated November 24, 2010, ¶ 3.) Petitioner failed to make a payment on the Note or pay the Judgment. The Secretary is the holder of the Note and Money Judgment on behalf of the United States of America.

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

- (a) \$14,723.17 as the unpaid principal balance as of October 31, 2010;
- (b) \$4,126.97 as the unpaid interest on the principal balance at 5.0% per annum through October 31, 2010; and
- (c) interest on said principal balance from November 1, 2010, at 5.0% per annum until paid.

(Sec’y Stat., ¶ 5, Porter Decl., ¶ 4.)

A Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings dated September 1, 2010 was sent to Petitioner. (Porter 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. (Sec’y Stat., ¶ 6, Porter Decl., ¶ 6.) As a result, the Secretary proposes a repayment schedule of \$77.24 per week or 15% of Petitioner’s disposable income. (Sec’y Stat., ¶ 10, Porter Decl., ¶ 7.)

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 terms of the proposed repayment schedule would cause him financial hardship.

Petitioner alleges that he didn’t have any work done on his home. (Petitioner’s Request for Hearing (“Pet’r’s Hrg. Req.”), dated November 3, 2010.) Petitioner more specifically states “I don’t know [sic] how much more clear I can be about this. I repeat I never had that work done.” (Pet’r’s Hrg. Req.). To date, Petitioner has failed to provide the necessary documentation in support of his claim that he received the proceeds from the loan but never had the work done.

The Secretary contends, on the other hand, that the Petitioner's failure to use the loan proceeds for their intended purpose does not vitiate the enforceability of the judgment. (Id.) As support, the Secretary submitted a copy of the Note bearing Petitioner's signature, in which "Petitioner accepted and agreed to the terms and covenants of the Note," one of which is to for Petitioner to remain legally obligate to pay the alleged debt upon default. (Sec'y Stat., Attach Note, p.2; Porter Decl., ¶ 3.) The Secretary further contends that "[t]he Title I loan proceeds were disbursed directly to Petitioner, since his loan application indicated that he was the individual responsible for ensuring the completion of improvements to his property." (Sec'y Stat., ¶ 8, Porter Decl., ¶ 8.)

Upon reviewing the terms of the Note bearing Petitioner's signature, it shows that Petitioner agreed that: "In return for a loan that I have received, I promise to pay U.S. \$15,500.00...to the order of the lender...The lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the 'Note Holder'." (Sec'y Stat., Exh. A, Attached Note, ¶ 1.) The record shows that "on May 3, 1999, the Note was assigned by Domestic Bank to HUD." (Sec'y Stat., ¶ 4.) Also evident on the face of the Note signed by Petitioner is not only the date the Note was executed, but also the date the funds thereafter were disbursed to Petitioner.

The Secretary also submitted, as evidence, a copy of the Writ of Execution on Money Judgment for the alleged debt against Petitioner, dated October 21, 1998, in which it shows that the alleged debt "remains valid for twenty years from the date of judgment." (Sec'y Stat., Ex. B; Attached Writ of Execution.) Consistent with the terms and conditions of the Note, and the judgment, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding. (Id., Sec'y Stat., Exh. A.)

Petitioner was ordered by this Office, on three occasions, 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 November 9, 2010; Order, dated December 7, 2010; and Order to Show Cause, dated January 25, 2011.) However to date, Petitioner has failed to comply with any of the orders issued by this Office, and thus has failed to prove the basis for his position. This Office 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 enforceable." *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, without any documentary evidence from Petitioner to refute or rebut the Secretary's claim and supporting documentation, I find that Petitioner's claim challenging the amount of the alleged debt must fail for lack of proof.

As a final point, 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).

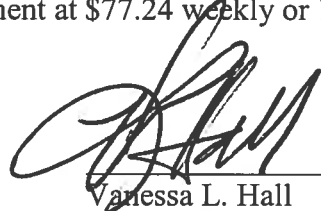
Accordingly, because Petitioner has also failed to comply with any of the Orders issued by this Office, I find that Petitioner's non-compliance to the Orders issued by this Office provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding 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 \$77.24 weekly or 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

March 17, 2011