



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

In the Matter of:

**Stephen C. Ashby,**  
Petitioner

HUDOA No. 11-H-NY-AWG37  
Claim No. 52-0883319GV

Stephen C. Ashby  
694 Kress Road  
Yemassee, SC 29945

Pro se

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For the Secretary

**DECISION AND ORDER**

On December 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), on December 22, 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 December 22, 2010.)

### **Background**

On February 16, 1993, Petitioner executed and delivered to Highland Home Brokers, Inc. a Retail Installment Contract (“Note”) in the amount of \$31,597.25, 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 January 14, 2011, ¶ 2, Ex. A.)

Contemporaneously, on February 16, 1993, the Note was assigned by Highland Home Brokers Inc. to Logan-Laws Financial Corporation. (*Id.* at ¶ 3, Ex. A, pp. 2, 4.) Logan-Laws Financial Corporation subsequently went out of business, and the Government National Mortgage Association (“GNMA”) took over its loans. (*Id.* at ¶ 4; Ex. B, Declaration of Christopher C. Haspel, Director, Mortgage-Backed Securities Monitoring Division of the GNMA within HUD (“Haspel Decl.”), dated January 11, 2011, ¶ 4.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec’y. Stat., ¶ 5.)

Petitioner is currently in default on the Note. (*Id.* at ¶ 6.) The Secretary has made efforts to collect from Petitioner, but has been unsuccessful. (*Id.*) The Secretary has filed a Statement in support of his position that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$26,422.04 as the unpaid principal balance;
- (b) \$7,864.15 as the unpaid interest on the principal balance at 13% per annum through January 11, 2011; and
- (c) interest on the principal balance from January 12, 2011 until paid.

(*Id.*; Haspel Decl., ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated November 26, 2009, was sent to Petitioner. (Sec’y. Stat., ¶ 7; Haspel Decl., ¶ 7.) 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 but, to date, has not entered into such an agreement. (Sec’y. Stat., ¶ 8; Haspel Decl., ¶ 7.) Based on a review of Petitioner’s Financial Statement, claiming financial hardship, the Secretary proposes a repayment schedule of 10% of Petitioner’s disposable pay instead of the Federal Agency allowed amount of 15%. (Sec’y. Stat., ¶ 9, Haspel Decl., ¶ 8.)

## 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, that the amount of the debt is incorrect, or that the terms of the proposed repayment schedule are unlawful or would cause financial hardship. Petitioner claims that (1) he does not owe the alleged debt; (2) he does not owe the full amount of the debt; and (3) he is unable to repay the debt due to financial hardship. (4) Petitioner also requests for an adjustment in the penalties.

First, Petitioner claims he does not owe the alleged debt. Petitioner states, “I know my name is on the account but I have no knowledge of signing the account with the creditor[.] [A]t the time[,] my mother lost her home because she was out sick and could not work and had me to sign papers that I’ve have [sic] no knowledge about because I was young and was trying to help her.” (Petitioner’s Request for Hearing (“Pet’r Hr’g Req.”), p. 3, filed December 21, 2010.) Petitioner, however, has failed to provide documentary evidence in support of his claim that he does not owe the debt.

The Secretary contends, on the other hand, that the Note states, “Buyer . . . purchases the following described manufactured home and other personal property (herein called the Property) for the Total Sales Price and on the terms set forth in this contract.” (Sec’y. Stat., Ex. A, p. 1.) The Secretary stated that, “When Petitioner purchased the manufactured home, he signed the Note as the “Buyer” and thereby assumed all obligations and covenants of the Note.” (Id.) As proof, the Secretary provides a copy of the Note, bearing Petitioner’s signature. (Sec’y. Stat., Ex. A.) In particular, the Note, bearing Petitioner’s signature, states, “Buyer acknowledges notice of above assignment and agrees to make the payments set forth in the above Payment Schedule to Logan-Laws Financial Corporation.” (Sec’y. Stat., Ex. A, p. 2.) “Logan-Laws Financial Corporation subsequently went out of business, and the GNMA took over its loans.” (*Id.* at ¶ 4; Haspel Decl., ¶ 4.) The Secretary finally contends: “As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner.” (Sec’y. Stat., ¶ 5.)

The record shows that, in addition to signing as the Buyer who agreed to the terms of the Note, Petitioner also signed as the Buyer agreeing to the assignment of the Note to Logan-Laws Financial Corporation. As a result, “In order for Petitioner not to be held liable for the debt, there must either be a release in writing from the lender specifically discharging Petitioner’s obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release.” *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986)). Petitioner has not provided any evidence to prove that the lender or HUD was a party to a written release or an agreement to release Petitioner from liability. Therefore, I find that Petitioner has failed to prove, by a preponderance of the evidence that he does not owe the alleged debt, and accordingly I find that remains contractually obligated to repay the debt to HUD.

Second, Petitioner challenges the amount of the alleged debt as claimed by the Secretary. Petitioner more specifically states, “My mother live[d] in [the] residence. She was paying until she [was] decease[d] (died).” (Pet’r Hr’g Req., p. 1.) Petitioner also states, “[M]y mother passed away . . . . [A]t the same time[,] I called the creditor and told them that I could not pay form [sic] the home that my mother had and they needed to come and pick it up. [S]ome [sic] came out to look at the home and [I] ha[ve] not heard anymore from the company.” (*Id.*) But, Petitioner again failed to submit documentary evidence either to prove that the alleged amount of the debt is incorrect, or to otherwise substantiate that the balance he alleges as owed is the accurate amount.

The Secretary states, however, that “Petitioner is justly indebted to the Secretary in the following amounts of (a) \$26,422.04” plus unpaid interest. (Sec’y. Stat., ¶ 6.) As support, the Secretary provided a copy of the Note signed by Petitioner that also reflects the amount originally financed, along with a signed affidavit from the Director of Mortgage-Backed Securities Monitoring Division of the GNMA that substantiates the amount claimed by the Secretary. (Sec’y. Stat., Ex. A; Haspel Decl., ¶ 6.) While Petitioner claims that his mother “was paying until she [was] decease[d]”, Petitioner has failed to produce any evidence to disprove the amount claimed by the Secretary, despite being ordered three times to produce such documentation. (Notice of Docketing, December 22, 2010; Order, dated January 21, 2011; Order to Show Cause, dated February 25, 2011.) This Office has held that assertions without evidence are insufficient 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). Therefore, I find that Petitioner’s claim challenging the amount of the alleged debt fails for lack of proof.

Third, Petitioner claims he is unable to repay the subject debt due to financial hardship. Petitioner states, “I’m writing to inform you about the hardship I’m having[.] I’m over budgeted[.] [S]ince the inflation situation[,] I’m not making the overtime hours at my job to compensate what I half [sic] to pay out in bills that are behind.” (Pet’r Hr’g Req., p. 3.) As support, Petitioner provided this Office with a copy of his *Financial Statement of Debtor*, along with proofs of payment of monthly expenses. (*Id.*, Attach.)

According to the “Financial Statement of Debtor,” completed and signed by Petitioner on December 7, 2010, Petitioner’s bi-weekly gross income totals \$1,409.52, rendering his monthly gross pay \$2,819.04. (*Id.*, Attach.) Petitioner’s disposable income 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). Although Petitioner included life insurance and other payroll deductions (including 401k contributions) on his Financial Statement of Debtor, such deductions were not deemed to be “amounts required by law to be withheld” as defined under 31 C.F.R. § 285.11(c). After deducting the allowable deductions, namely federal, state/county/city and social security (FICA/Medicare) taxes and medical insurance, Petitioner is left with a monthly disposable income of \$2,399.00. (*Id.*, Attach.)

Petitioner listed as fixed monthly household expenses: mortgage, \$1,310.56; car payment, \$495.00; gasoline (automobile), \$200.00; electricity, \$300.00; loans, \$295.00; loans, \$235.00; car insurance, \$395.00; telephone, \$70.00; and food, \$600.00. (*Id.*, Attach.) Petitioner also submitted bills and statements reflecting the following monthly expenses: DIRECTV cable television statement, \$126.04; Lowe's Credit Card, \$85.00; FDIC commercial loan, \$534.25; and SCBT commercial mortgage loan, \$385.32; and CenturyLink telephone, \$195.52; as well as past due amounts for Beaufort Pediatrics PA "Past Due" statement, \$717.80; and Navy Federal Credit Union "Past Due" statement, \$441.55; (*Id.*, Attach.) Documentation was provided for all of the bills submitted by Petitioner except for food, gasoline (automobile), and car insurance.

The monthly expenses listed for DIRECTV, Lowe's Credit Card, and the FDIC and SCBT commercial loans, will not be credited towards Petitioner's essential monthly household expenses because Petitioner has failed to show that these expenses are essential.<sup>1</sup> The expenses for Beaufort Pediatrics PA, \$717.80, and the Navy Federal Credit Union, \$441.55, identified as past due amounts, will be credited towards Petitioner's essential expenses but, instead of the total amount identified, they will instead be identified at a monthly average of \$59.82 and \$36.80, respectively. The reason these expenses will be treated as monthly averages is because Petitioner has neither established a recent record of payment for these specific expenses nor has he established the necessity of such expenses being treated as recurring monthly expenses. While the CenturyLink monthly telephone statement reflects a total amount due of \$195.52, it is a sum of a past due amount of \$124.89 and a total current charge of \$70.63. (*Id.*, Attach.) Because the total current charge more accurately reflects a monthly expense and more closely coincides with Petitioner's monthly telephone expense of \$70.00 as identified in his Financial Statement of Debtor, only \$70.63 will be credited towards Petitioner's monthly household expenses. Petitioner will also be credited for electricity, \$300.00, and the car note, \$495.00.

Other expenses listed, for which Petitioner did not provide documentary evidence, are: gasoline, \$200.00; loans, \$295.00; loans, \$235.00; car insurance, \$395.00; and food, \$600.00. (*Id.*, Attach.) This Office has determined that credit may be given for certain essential household expenses, such as rent and food, even though Petitioner has not provided bills or other sufficient documentation, yet the "financial information submitted by Petitioner . . . [was found to be] generally credible . . ." *David Herring*, HUDOA No. 07-H-NY-AWG53 (July 28, 2009) (citing *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). In accordance with the *Herring* and *Loera* holdings, this Office will credit Petitioner with his alleged monthly expenses for his gasoline (automobile), \$200.00; car insurance, \$395.00; and food, \$400.00.<sup>2</sup> The two loans listed as expenses, in the amount of \$295.00 and \$235.00, respectively, will not be credited

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<sup>1</sup> The FDIC statement reflects an address (688 Kress Road, Yemassee, SC 29945) different from Petitioner's residence or another real property owned by Petitioner, and such indicates that the loan type is "commercial." The SCBT statement also shows that the loan type is commercial-mortgage" for a collateral/property located at 124 Mackey Rd., Yemassee, SC, also a different address.

<sup>2</sup> Petitioner's alleged food expense in the amount of \$600.00 is deemed excessive, and, therefore, \$400 will be credited towards Petitioner's essential expenses.

towards Petitioner's essential expenses because they were not deemed as essential. Thus, Petitioner's total for monthly household expenses is \$3,171.19.

Petitioner's monthly household expenses of \$3,171.19 exceed his monthly disposable income of \$2,399.00 by \$772.19. A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$359.85 per month and would leave Petitioner with a negative balance of (-\$1,132.04). A 10% garnishment rate would lower Petitioner's garnishment amount to \$239.90 per month and would leave Petitioner with a negative balance of (-\$1,012.09). A 5% garnishment rate would lower Petitioner's payments to \$119.95 per month and would leave Petitioner with a negative balance of (-\$892.14). Because Petitioner's essential monthly household expenses exceed his monthly disposable income, a financial hardship would exist for Petitioner in this case.

Pursuant to 31 C.F.R. § 285.11(k) (3), this Office has the authority to order garnishment at a lesser rate based upon the record before it, particularly in cases where financial hardship is found. Upon due consideration, this Office finds that the Petitioner has submitted sufficient documentary evidence to substantiate his claim that the administrative wage garnishment of his disposable pay, in the amount sought by the Secretary, would cause a financial hardship. While the Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, a garnishment amount at any percentage of Petitioner's disposable income would constitute a financial hardship sufficient enough to forego collection at this time.

Finally, Petitioner is "asking for the amount of the penalties to be taken off the late fees." (Pet'r Hr'g Req., p. 3.) While Petitioner may wish to negotiate repayment terms with HUD, this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. It should be noted that since financial hardship has been established in this case, this issue is declared moot at this stage. If collection by administrative wage garnishment is sought in the future, Petitioner may again raise this issue to be addressed at that time.

### **ORDER**

Based on the foregoing, I find that an administrative wage garnishment would create a financial hardship for Petitioner at this time.

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment shall remain indefinitely. Therefore, it is hereby

**ORDERED** that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment because of Petitioner's financial circumstances at this time.

However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment if, in the future, Petitioner's income increases or his expenses for necessities are reduced.



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Vanessa L. Hall  
Administrative Judge

May 26, 2011