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

In the Matter of:

Ronnie Chavis,

Petitioner

HUDOA No. 11-H-NY-AWG44
Claim No. 5529744 LL 9244

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Pro se

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For the Secretary

AMENDED DECISION AND ORDER

On January 10, 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 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. 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 January 13, 2011, 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 January 13, 2011.)

Background

On February 25, 1993 Petitioner executed and delivered a Retail Installment Contract ("Note") in the amount of $15,812.00 to Showcase Homes Inc. (Secretary's Statement ("Sec'y Stat."), dated February 1, 2011, ¶ 2, Ex. A.) The Note was insured against nonpayment by the Secretary pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Sec'y Stat., ¶ 2.) Contemporaneously, on February 25, 1993, the Note was assigned by Showcase Homes Inc. to Logan-Laws Financial Corporation ("Logan-Laws"). (*Id.* ¶ 3.) Logan-Laws was defaulted as an issuer of Mortgage Backed Securities ("MBS") due to its failure to comply with Government National Mortgage Association's ("GNMA") MBS program requirements. (*Id.* ¶ 4, Declaration of Christopher C. Haspel, Director, Mortgage-Backed Securities Monitoring Division of the GNMA ("Haspel Decl."), dated January 27, 2011, ¶ 4). Therefore, all of Logan-Law's rights and interest in Petitioner's loan were assigned to GNMA by virtue of the assignment contained in the Guaranty Agreement entered into between Logan-Laws and GNMA. (Sec'y Stat., ¶¶ 4-5, Haspel Decl., ¶ 4.) As GNMA is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Haspel Decl., ¶ 5.)

Petitioner is currently in default on the Note. The Secretary has made efforts to collect from Petitioner, but has been unsuccessful. The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD in the following amounts:

(a) $9,142.14 as the unpaid principal balance;
(b) $3,544.91 as the unpaid interest on the principal balance at 13% per annum through January 27, 2011;
(c) interest on said principal balance from January 28, 2011, until paid; and
(d) $466.02 of administrative cost.

(Sec'y Stat., ¶ 7, Haspel Decl., ¶ 6.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated December 30, 2010, was sent to Petitioner. (Haspel Decl., ¶ 7, Ex. B.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement under mutually agreeable terms. To date, Petitioner has not entered into a written repayment agreement. (Sec'y Stat., ¶ 14, Haspel Decl., ¶ 7.) GNMA proposes a wage garnishment amount of 10% of Petitioner's disposable pay, instead of the Federal Agency allowed amount of 15%. (Sec'y Stat., ¶ 15, Haspel Decl., ¶ 8.)

Discussion

Pursuant to 31 C.F.R. §285.11 (f)(8)(ii), if Petitioner disputes the existence or amount of the debt the Petitioner "must present, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect." Here, Petitioner disputes the enforceability of the debt alleged against him in this case. (Pet'r's Hr'g Req., dated Jan. 3, 2011.) Petitioner first asserts that:

> I am well aware of my rights under the Fair Debt Collection Practices Act (FDCPA) and my state laws so I hope to save both of us a great deal of time by letting you know that I have also verified that the Statute of Limitations for enforcing this type of debt through the courts in NC has expired. Therefore, should you decide to pursue this matter in court I intend to inform the court of that [sic] the "statute of limitations" has expired.

(*Id.*)

The Secretary contends, on the other hand, that:

9. Contrary to Petitioner's contention, the laws of the State of North Carolina are not controlling. North Carolina law does not apply to matters governed by the Federal Constitution or acts of Congress. *See Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

10. The Secretary is authorized to use administrative wage garnishment as a means to collect the debts he is owed pursuant to the Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720, *et seq*), and the implementing regulations found at 31 C.F.R. § 285, *et seq*. *See* 31 U.S.C. § 3720D (2010).

11. Section 3720D of the United States Code does not contain a limitation of time within which the Secretary must bring actions to collect the debts he is owed via administrative wage garnishment. *Id.*; *see also In the Matter of Karen T. Jackson*, HUDOA No. 09-H-NY-AWG87, at pp. 3-4 (June 3, 2009) (31 U.S.C. § 3720D is the controlling statute authorizing federal agencies to use administrative wage garnishment to collect debts, and there is no time restriction for the commencement of a garnishment action).

(Sec'y Stat., ¶¶ 9-11.)

In this case, there exists an applicable act of Congress, 31 U.S.C. § 3720D, a federal statute that supersedes the application of North Carolina's statute of limitations. While 31 U.S.C. § 3720D does not contain a statute of limitations for filing wage garnishment actions, it does provide:

> **(a)** Notwithstanding any provision of State law, the head of an executive, judicial, or legislative agency that administers a program that gives rise to a delinquent nontax debt owed to the United States by an individual may in accordance with this section garnish the disposable pay of the individual to collect the amount owed, if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual.

Furthermore, in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938), the U.S. Supreme Court held that, "*Except in matters governed by the Federal Constitution or by acts of Congress*, the law to be applied in any case is the law of the state." (emphasis added). *See also BP America Prod. Co. v. Burton*, 549 U.S. 84, 91-95 (2006) (holding that the statute of limitations in 28 U.S.C. § 2415(a), barring federal contract actions for money damages after six years, only applied to court actions and not to administrative payment orders). Thus it is well settled that "the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights." *United States v. Summerlin*, 310 U.S. 414, 416 (1940). Such delay in pursuing HUD's claim does not prevent the Secretary from enforcing the terms of the Note in this case. Therefore, this Court finds that the Secretary is not barred by a statute of limitations from initiating wage garnishment proceedings against Petitioner for the debt that is the subject of this proceeding.

As a final point, I further find that sanctions pursuant to 24 C.F.R. § 26.4 are justified in this case. Rule 26.4(c) 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 26.4(c) of Title 24 of the Code of Federal Regulations.

ORDER

For the reasons set forth above, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative wage garnishment in the amount of 10% of Petitioner's disposable income.

This Amended Decision and Order supersedes the Decision and Order originally issued on June 28, 2011 because the address for the Secretary's counsel reflected in the original decision was in error. While the address reflected in the original decision did not affect receipt of the Decision by the appropriate parties, this amendment ensures that the record is, to the extent possible, accurate.

Vanessa L. Hall
Administrative Judge

July 7, 2011