



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

In the Matter of:

Kelvin I. Stevens,
Petitioner

HUDOA No. 11-H-NY-AWG78
Claim No. 5511445 LL 9244

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Pro se

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For the Secretary

DECISION AND ORDER

On March 22, 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 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 April 6, 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 April 6, 2011.)

Background

On July 1, 1992, Petitioner executed and delivered to Lumberton Housing Center, a Retail Installment Contract (“Note”) in the amount of \$20,730.20, 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 April 27, 2011, ¶ 2, Ex. A.) Contemporaneously, on July 1, 1992, the Note was assigned by Lumberton Housing Center to Logan-Laws Financial Corporation. (Id.) Logan-Law Financial Corporation subsequently went out of business, and the Government National Mortgage Association (“GNMA”) took over their loans. (Sec’y. Stat., ¶ 4, Declaration of Christopher C. Haspel, Director, Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association within HUD (“Haspel Decl.”), dated April 21, 2011, ¶ 4.)

As GNMA is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner, but has been unsuccessful. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$8,853.13 as the unpaid principal balance;
- (b) \$449.47 as the unpaid interest on the principal balance at 13% per annum through April 21, 2011; and
- (c) interest on said principal balance from April 22, 2011 until paid.

(Sec’y. Stat., ¶ 6, Haspel Decl., ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated January 20, 2011 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 mutually agreeable terms. To date, Petitioner has not entered into a written repayment agreement. (Sec’y. Stat., ¶ 8, Haspel Decl., ¶ 7.) The Secretary and GNMA propose a wage garnishment amount of 10% of Petitioner’s disposable pay, instead of the Federal Agency allowed amount of 15%. (Sec’y. Stat., ¶ 11, Haspel Decl., ¶ 8.)

Discussion

Petitioner does not contest the existence or amount of the debt. Petitioner contends that the debt is not enforceable against him as a result of a divorce agreement made between Petitioner and his ex-spouse. (Petitioner’s Request for a Hearing (“Pet’r’s Hr’g. Req.”), dated April 1, 2011.) More specifically, Petitioner claims that, “I did not received [sic] any letters with the information that I need it [sic] at the time, and any additional information also regarding on the dateline date of February 10, 2011.” Petitioner also stated that, “My ex-wife gave me the letter in person on the date of March 13, 2011; by this time my wages has [sic] been garnish from

my payroll checks. Before this time any delinquent payment[s] were made by my ex-wife, we were divorce[d] on the date of August 9, 1999 at this time she has been living in the home in question.” (*Id.*)

As support, Petitioner submitted a copy of a Quitclaim Deed which states that his ex-wife retained all responsibility for the property. HUD, however, is not bound by the terms of Petitioner’s Quitclaim Deed. (*Id.*)

In response, the Secretary asserts that “As co-signers on the Note, Petitioner and his former wife are jointly and severally liable for repayment of the entire indebtedness. Consequently, HUD, at its option, may seek repayment from Petitioner and/or his former wife.” *Charlene Givens*, HUDOA No. 09-M-NY-AWG46 (June 25, 2009). (Sec’y. Stat., ¶ 10.) As support, the Secretary produced a copy of the Note that reflected the signatures of Petitioner and his ex-spouse. (Sec’y. Stat., Ex. A.)

In cases involving co-signor liability, this Office has previously held that co-signers of a loan are jointly and severally liable to the obligation, and as a result, “a creditor may sue the parties to such obligation separately or together.” *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). As such, “the Secretary may proceed against any co-signer for the full amount of the debt” because each co-signer is jointly and severally liable for the obligation. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Additionally, the Secretary’s right to collect the alleged debt in this case emanates from the terms of the Note. *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the subject debt he must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release him from his obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *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).

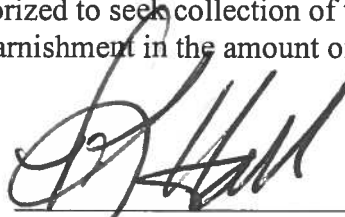
In the instant case, Petitioner has failed to produce evidence of a written release from his obligation to pay the alleged debt or evidence of valuable consideration paid to HUD in satisfaction of the debt, thus rendering the alleged debt unenforceable. While the Petitioner may be divorced from his ex-spouse, neither the Secretary nor the lender was a party to the divorce action and as such, the terms of the divorce decree are not binding on HUD. Petitioner may seek to enforce, in the state or local court, the terms of the divorce decree against his ex-wife so that Petitioner may recover from his ex-spouse monies he paid to HUD in order to satisfy this legal obligation. See *Michael York*, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3. I find, therefore, without proof of a written release, Petitioner remains legally obligated to pay the subject debt as a co-signor on the Note.

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 in the amount of 10% of Petitioner's disposable pay.



Vanessa L. Hall
Administrative Judge

June 20, 2011