



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

In the Matter of:

Howard McRae,

Petitioner

HUDOA No. 11-H-NY-AWG99
Claim No. 5528951 LL 9244

Howard McRae
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Clio, SC 29525-0884

Pro se

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For the Secretary

DECISION AND ORDER

On May 9, 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 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 May 12, 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 May 12, 2011.)

Background

On March 3, 1993, Petitioner executed and delivered to Blackwell Enterprises, Inc. DBA Airport Homes a Retail Installment Contract ("Note") in the amount of \$17,487.94, which was insured against nonpayment by the Secretary pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Secretary's Statement ("Sec'y Stat.") ¶ 2, Ex. A, filed June 7, 2011; Declaration of Christopher C. Haspel, Director, Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association ("Ginnie Mae") within HUD ("Haspel Decl.") ¶ 3, dated May 25, 2011.) Contemporaneously, on March 3, 1993, the Note was assigned to Logan-Laws Financial Corporation ("Logan-Laws"). (Sec'y Stat. ¶ 3; Haspel Decl. ¶ 3.) Logan-Laws was defaulted as an issuer of Mortgage Backed Securities ("MBS") due to its failure to comply with Ginnie Mae's MBS program requirements. (Sec'y Stat. ¶ 4; Haspel Decl. ¶ 4.) As Ginnie Mae is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec'y Stat. ¶ 6; Haspel Decl. ¶ 5.)

Petitioner is currently in default on the Note. (Sec'y Stat. ¶ 7; Haspel Decl. ¶ 6.) The Secretary has made efforts to collect from Petitioner, but has been unsuccessful. (Sec'y Stat. ¶ 7; Haspel Decl. ¶ 6.) The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$7,753.11 as the unpaid principal balance;
- (b) \$76.57 as the unpaid interest on the principal balance at 13% per annum through May 25, 2011;
- (c) interest on said principal balance from May 26, 2011, until paid.

(Sec'y Stat. ¶ 7; Haspel Decl. ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated January 28, 2011 was sent to Petitioner. (Sec'y Stat. ¶ 8; 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. (Sec'y Stat. ¶ 9; Haspel Decl. ¶ 7.) As of June 7, 2011, Petitioner has not entered into a written repayment agreement. (Sec'y Stat. ¶ 9.)

The Secretary's proposed repayment schedule is 10% of Petitioner's disposable pay. (Sec'y Stat. ¶ 12; 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, Petitioner "must present, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect." Petitioner objects to the proposed administrative wage garnishment based on (1) his ex-wife's receipt of the mobile home pursuant to a divorce decree, (2) his offer to transfer title of the mobile home to HUD, and (3) financial hardship. (Pet'r's Resp. & Req., filed June 21, 2011.)

As support for Petitioner's claim that he was not legally obligated to pay the alleged debt pursuant to a divorce decree, Petitioner submitted a copy of his divorce decree in order to establish that his divorce from his spouse was final and to prove that his spouse was the party solely responsible for the debt that is the subject of this proceeding. (Pet'r's Hr'g Req., filed May

9, 2011.) In response, the Secretary states that “Petitioner and his former wife are jointly and severally liable for repayment of the entire indebtedness,” allowing HUD to “seek repayment from Petitioner and/or his former wife.” (Sec’y Stat. ¶ 11.)

This Court 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 (Jan. 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 (Jan. 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (Feb. 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 Petitioner may be divorced from his ex-spouse, neither the Secretary nor the lender was a party to the divorce action. So as a recourse, Petitioner may seek to enforce, in the state or local court, the divorce decree that was granted against his ex-wife so that Petitioner may recover from his ex-spouse monies paid to HUD by him in order to satisfy this legal obligation. *See Michael York*, HUDBCA No. 09-H-CH-AWG36 (June 26, 2009). 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.

Next, Petitioner claims, through counsel, that he would be willing to sign over the title of the mobile home. (Pet’r’s Resp. & Req.) However, this offer may not be addressed during this proceeding. This Court is not authorized to extend, recommend, or accept any payment plan, or transfer of title, or consider any settlement offer on behalf of HUD. Petitioner nevertheless may wish to discuss this matter with either Counsel for the Secretary, or submit a HUD Office Title I Financial Statement (HUD Form 56142) to Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

Finally, Petitioner claims that “the wage garnishment causes him a financial hardship” and asks this Court to reduce the garnishment amount from 15% to 5%. (Pet’r’s Resp. & Req.) In support of his financial hardship claim, Petitioner provided copies of pay statements and proofs of payment for his monthly expenses. (Petitioner’s Documentary Evidence (“Pet’r’s Evid.”), filed July 5, 2011.) Petitioner’s weekly pay statements indicate that Petitioner’s average weekly gross pay is \$495.85, or \$1,983.40 monthly. (*Id.*) The Secretary is authorized to garnish up to 15% of the debtor’s disposable pay, which is determined “after the deduction of health

insurance premiums and any amounts required by law to be withheld. . . . includ[ing] amounts for deductions such as social security taxes and withholding taxes.” 31 C.F.R. § 285.11(c). After subtracting allowable deductions for federal tax, \$229.56; FICA, \$111.28; Medicare, \$28.80; and state tax, \$115.76, Petitioner is left with a monthly disposable income of \$1,498.00.

The documentary evidence submitted by Petitioner for his essential monthly household expenses are: electric/water/sewer, \$266.41; car insurance, \$139.96; phone, \$110.36; and fire insurance, \$18.00. (Pet’r’s Evid.)

Certain other proofs of monthly expenses submitted will not be credited toward Petitioner’s household expenses because Petitioner has not submitted sufficient documentation to establish these household expenses as essential: Visa credit card, \$25.00; Chase credit card, \$15.00; Lowe’s, \$15.00; MetroCast, \$54.95; Fingerhut, \$9.99; life insurance, \$67.50; and MasterCard, \$15.00. (Pet’r’s Evid.) Therefore, based on the evidence provided by Petitioner, Petitioner’s essential monthly household expenses total \$534.73.

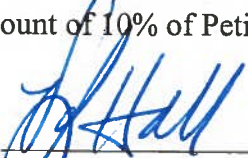
Petitioner’s disposable income of \$1,498.00 exceeds his monthly living expenses of \$534.73 by \$963.27. A 15% garnishment rate of Petitioner’s current monthly disposable income would result in a garnishment amount of \$224.70 per month and would leave Petitioner with a positive balance of \$738.57. However, the Secretary proposes a lower wage garnishment amount of 10% of Petitioner’s disposable income, instead of the 15% garnishment amount allowed for a federal agency. A 10% garnishment rate would result in a garnishment amount of \$149.80, in this case, and would leave Petitioner with a positive balance of \$813.47, a monthly balance that would cover any other miscellaneous on a monthly basis. As a result, Petitioner has not met his burden of establishing, by a preponderance of the evidence, that the Secretary’s proposed repayment schedule creates a financial hardship for him. Therefore, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

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 in 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.



Vanessa L. Hall
Administrative Judge

October 25, 2011