



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

In the Matter of:

Michael E. Fair,
Petitioner

HUDOA No. 11-M-CH-AWG117
Claim No. 77-004050-60A

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Pro se

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DECISION AND ORDER

On July 8, 2011, 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" or "the Department") by Petitioner. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3716), authorizes federal agencies to utilize 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 adjudicate contested cases where the HUD Secretary seeks to collect debts by means of administrative wage garnishment. This case 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. Pursuant to 31 C.F.R. § 285.11(f)(10)(ii), HUD must suspend any currently active wage withholding order, beginning on the 61st day after receipt of the hearing request and continuing until a written decision has been rendered. (Notice of Docketing, Order and Stay of Referral ("Notice of Docketing"), 3; issued July 14, 2011.)

Background

On May 5, 1978, Petitioner executed a Retail Installment Contract Vehicle Security Agreement (“Note”) that was insured against default by HUD pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (“Sec’y Stat.,” ¶ 1, filed July 27, 2011.) The lender assigned the Note Commodore Financial Services Corporation, who later assigned it to Home Owners Funding Corporation of America. (Sec’y Stat., Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), ¶ 3, dated July 26, 2011.) After Petitioner failed to make payments on the Note, Home Owners Funding Corporation of America assigned it to the United States of America on May 6, 1987. (Sec’y Stat., ¶ 2; Dillon Decl., ¶ 3.) The Secretary is the holder of the Note on behalf of the United States. (*Id.*)

HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec’y Stat. ¶ 3; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$5,437.80 as the unpaid principal balance as of June 30, 2011;
- (b) \$6,790.27 as the unpaid interest on the principal balance at 6.0% per annum through June 30, 2011; and
- (c) interest on said principal balance from July 1, 2011 at 6.0% per annum until paid.

(Sec’y Stat., ¶ 4; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Wage Garnishment Proceedings, dated June 1, 2011, was sent to Petitioner. (Sec’y Stat. ¶ 5; Dillon 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. (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 6.) Petitioner has not entered into such an agreement.

On July 1, 2011, an Administrative Wage Garnishment Order was sent to Petitioner’s employer. (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 7.) To date, the Secretary has received no funds as a result of the garnishment order. (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 7.)

The Secretary requests a repayment schedule of 15% of Petitioner’s disposable bi-weekly income, or \$382.70. (Sec’y Stat., ¶ 8; Dillon Decl., ¶ 8.)

Discussion

The Secretary bears the initial burden of proof to show the existence and amount of the alleged 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 or unenforceable. 31 C.F.R. § 285.11(f)(8)(ii).

As evidence of the existence and amount of the debt here, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note and the sworn

testimony of the Acting Director of HUD's Asset Recovery Division. (See Sec'y Stat; Ex. A; Ex. B). I find that the Secretary has therefore met his burden.

Petitioner does not dispute the existence or amount of the alleged debt. Rather, he contends that a garnishment of 15% of his wages will cause a substantial financial hardship. (Petitioner's Hearing Request ("Pet'r's Hr'g Req.)) Petitioner has offered as documentary evidence a Debt Resolution Program Financial Statement, several pay statements, and an unsigned, handwritten agreement plan with his mortgage company. (*Id.*)

The evidence filed by Petitioner does not fully comply with the orders contained in the Notice of Docketing. To succeed upon a financial hardship claim, the Petitioner's evidence "must include proof of payment of household expenses". (Notice of Docketing, p. 2.) Evidence of such payments include cancelled checks, receipts or copies of utility bills. (*Id.*)

This Office gave Petitioner 45 days from the date of the Notice of Docketing — July 14, 2011 — to file evidence sufficient to support his claim of financial hardship. (Notice of Docketing, 2.) Petitioner's evidence would therefore have been due on or about September 1, 2011. Petitioner failed to file such evidence.

On October 6, 2011, this Office again ordered Petitioner to file, on or before November 1, 2011, documentary evidence to prove that the proposed garnishment would create a financial hardship. (Order, issued October 6, 2011.) The Order also stated that "[F]ailure to comply with this Order may result in sanctions being imposed by the Court . . . including judgment being entered in favor of the opposing party, or a decision based on the record of this proceeding." Petitioner failed to comply with the Order.


The Secretary has introduced documentary evidence proving that Petitioner signed the subject Note, that the Note was subsequently assigned to HUD, and that Petitioner has failed to make payments upon the Note. Petitioner, on the other hand, has failed to present evidence that a bi-weekly garnishment of \$382.70 will cause a financial hardship for him, despite being twice-ordered to produce any such evidence. I therefore find that Petitioner has failed to meet his burden of proof, and is therefore liable for the debt in the amount claimed by the Secretary.

ORDER

For the reasons set forth above, 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 to the extent authorized by law.

January 3, 2012



H. Alexander Manuel
Administrative Judge