



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

In the Matter of:

David King Jr.

Petitioner

HUDOA No. 11-M-CH-AWG123
Claim No. 780726730

David King Jr.
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Pro se

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DECISION AND ORDER

On July 26, 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)(4), on August 4, 2011, this Office stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral ("Notice of Docketing"), 2, issued August 4, 2011.)

Background

On September 5, 2008, Petitioner executed and delivered a Property Improvement Program Note ("Note") in the amount of \$20,644.80 to Chemical Bank West ("NICCU") for a home improvement loan that 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."), ¶ 1, filed August 23, 2011; Ex. A, Note.)

After Petitioner failed to make payments on the loan, Chemical Bank West assigned the Note to the Michigan State Housing Development Authority, who in turn assigned the Note to the United States of America. (*Id.* at ¶¶ 1-2.) The Secretary is the holder of the Note on behalf of the United States.

HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec'y Stat. ¶ 3; Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 4, dated August 22, 2011.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$19,999.70 as the unpaid principal balance as of July 31, 2011;
- (b) \$532.64 as the unpaid interest on the principal balance at 1.0% per annum through July 31, 2011;
- (c) \$1,225.94 as the unpaid penalties as of July 31, 2011;
- (d) \$35.33 as unpaid administrative costs as of July 31, 2011; and
- (e) interest on said principal balance from August 1, 2011, at 1.0% per annum until paid.

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

A Notice of Intent to Initiate Wage Garnishment Proceedings, dated July 6, 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., ¶ 6; Sautter Decl., ¶ 6.) Petitioner has not entered into such an agreement.

The Secretary requests a repayment schedule of \$39.05 per weekly pay period, which represents 25% of Petitioner's disposable income, less a \$44.94 weekly deduction for child support. (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 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 disputes the amount of the alleged debt and the garnishment amount. Specifically, Petitioner states that his now ex-wife is partially responsible for the debt as a co-signer of the Note and that a garnishment of any amount will make it impossible for Petitioner to meet his expenses. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed July 26, 2011.)

This Office has previously held that co-signers of a loan are jointly and severally liable to the obligation. 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 this debt or evidence of valuable consideration paid to HUD in satisfaction of the debt. While the Petitioner may be divorced from his ex-spouse, he has failed to provide evidence that either the Secretary or the lender were parties to the divorce action. HUD's right to collect the debt under the terms of the Note was therefore unaffected by the divorce. *Janet Rodocker*, HUDBCA No. 00-A-CH-AA17 (May 22, 2000). Petitioner may wish to pursue a contribution action in state or local court against his ex-spouse to recover from his ex-spouse monies paid to HUD to satisfy this legal obligation. See *Michael York*, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3. However, without proof of a written release or valuable contribution, I find that Petitioner remains legally obligated to pay the subject debt as a co-signer of the Note.

Petitioner states that a garnishment of 15% of his disposable income will cause substantial financial hardship. (Pet'r's Hr'g Req., p. 3.) Disposable income is defined as "that part of the debtor's compensation from an employer remaining 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). As

proof of his income, Petitioner has filed a copy of his June 27, 2011 – July 3, 2011 pay statement. (Pet'r's Hr'g Req., p. 4.) According to the statement, Petitioner earns a weekly paycheck of \$424.00. This income is deducted in the following amounts: federal income tax, \$47.12; social security tax, \$17.18; Medicare, \$5.93; and state income tax, \$17.79. (*Id.* at p. 3.) Petitioner thus claims a net weekly disposable income of \$335.98, or a monthly disposable income of \$1,343.92.

In determining financial hardship, the costs of essential living expenses must be deducted from Petitioner's net disposable income. The Notice of Docketing ordered Petitioner to file evidence documenting these expenses. (*See* Notice of Docketing, 2.) The Notice of Docketing states that "Petitioner's evidence should not be limited to a mere list of expenses, but instead must include proof of payment of household expenses. (*Id.*) The Notice of Docketing also includes a list of appropriate documents, such as copies of bills, cancelled checks, and copies of credit card payments. (*Id.*) Petitioner failed to file evidence responsive to the Notice of Docketing.

On October 6, 2011, Petitioner was again ordered to file, on or before November 4, 2011, documentary evidence proving payment of essential living expenses. (Order, ("Oct. 6th Order"), issued October 6, 2011.) The Order again stated that the evidence should not be a mere list of expenses, and again provided examples of acceptable documents.

Petitioner filed a letter to this Court on November 3, 2011, in which he described his economic situation. (Petitioner's Letter, filed November 3, 2011.) However, the letter merely lists Petitioner's bills and expenses. Petitioner has filed no documents showing actual payment of these expenses, as required in the Notice of Docketing and the Oct. 6th Order. In the letter, Petitioner states that he has "no real records or collections of pay stubs ... no grocery receipts, no gas receipts." (*Id.*) Without such documents, this Court is unable to substantiate Petitioner's claimed expenses, and thus cannot adequately determine whether the garnishment will cause substantial hardship. Consequently, I find that Petitioner's financial hardship claim fails for lack of proof.

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, meanwhile, has not shown that he was released from his obligation to repay debt, and has failed to present evidence that a weekly garnishment of \$39.05 will cause a financial hardship.

The Secretary requests a wage garnishment of 25% of Petitioner's weekly disposable income; a total of \$39.05 per week. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 8.) HUD regulations state that, when a debtor is also experiencing a wage withholding for family support, HUD may garnish either 15% of Petitioner's disposable pay or 25% of his disposable pay minus the amount of any family support payments, whichever is less. 31 C.F.R. §§ 285.11(i)(2)(i)(A), 285.11(i)(3). A 15% garnishment of Petitioner's disposable income, without factoring in child support payments, equals a weekly garnishment of \$50.40. A 25% garnishment, reduced by the weekly \$44.94 child support payment, equals \$39.05 per week, the amount the Secretary has requested.

With \$39.05 being the lesser of the two garnishments, the Secretary is authorized to collect only at that rate.

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 in the amount of \$39.05 per weekly pay period.



H. Alexander Manuel
Administrative Judge

December 7, 2011