



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

In the Matter of:

Walter Lewis,
Petitioner

HUDOA No. 11-M-CH-AWG30
Claim No. 770734355

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Pro se

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DECISION AND ORDER

On November 16, 2010, 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 are designated to determine whether the Secretary may collect the alleged debt in this case by means of administrative wage garnishment. This hearing 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. The Secretary has the initial burden of proving the existence and amount of debt in this case. 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 any repayment schedule proposed by the Secretary are unlawful, would cause 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 November 23, 2010, 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”), dated November 23, 2010.)

Background

On June 17, 1993, Petitioner executed and delivered to Universal Homecare Company a Retail Installment Contract & Disclosure Statement (“Note”), which was later assigned to Empire Funding Corp. and then to TMI Financial, Inc. (Secretary’s Statement (“Sec’y Stat.”), filed December 17, 2010, ¶ 2, Ex. B.) After default by Petitioner, the Note was assigned to HUD under the Title I Insurance Program. (Sec’y Stat.; Ex. C, Declaration of Brian Dillon (“Dillon Decl.”), dated December 16, 2010, ¶ 3.) The Secretary has attempted to collect on the Note, but Petitioner remains in default. (Sec’y Stat., ¶ 3; Dillon Decl., ¶ 4.)

A Wage Garnishment Order dated September 13, 2010 was issued to Petitioner’s employer. (Sec’y Stat., ¶ 5; Dillon Decl., ¶ 7.) Based on the issuance of this Order, Petitioner’s pay has been garnished five times between October 8, 2010 and November 29, 2010 in the amount of \$1,718.43. (Sec’y Stat., ¶ 6; Dillon Decl., ¶ 8.) These payments are reflected in the outstanding balance below. (Sec’y Stat., ¶ 6; Dillon Decl., ¶ 8.)

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) \$11,150.03 as the unpaid principal balance as of December 13, 2010;
- (b) \$452.29 as the unpaid interest on the principal balance at 3% per annum through December 13, 2010; and
- (c) interest on said principal balance from December 14, 2010 at 3% per annum until paid.

(Sec’y Stat., ¶ 7; Dillon Decl., ¶ 4.)

On or about August 4, 2010, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner. (Sec’y Stat., ¶ 4; 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, but declined to do so. (Sec’y Stat., ¶ 4; Dillon Decl., ¶ 6.) Based on Petitioner’s bi-weekly pay statement for the pay period ending September 26, 2010, the Secretary proposes a bi-weekly repayment schedule of 15% of Petitioner’s disposable pay or \$374.24. (Sec’y Stat., ¶¶ 10-11, Ex. A; Dillon Decl., ¶ 9.)

Discussion

Petitioner does not dispute the existence of the debt that is the subject of this proceeding. (Petitioner’s Request for a Hearing (“Pet’r Hr’g Req.”), filed November 16, 2010.) Rather, Petitioner claims that the debt is not enforceable against him because (1) the debt should be split between him and his ex-wife; and (2) the proposed wage garnishment would cause a financial hardship. (*Id.*) Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause financial hardship.

First, Petitioner states, "This debt should be split between my ex wife and I [sic]." (*Id.*) As one of the signatories on the Note, however, Petitioner is jointly and severally liable along with the other signatory for repayment of the alleged debt. "Liability is characterized as joint and several when creditors may sue the parties to an obligation separately or together." *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005) (*citing Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314 (July 15, 1987)). In this case, the Note, signed by both Petitioner and his ex-wife, specifically states, "Any person who signs this agreement as a co-marker, endorses it, or guarantees its payment, is jointly and severally obligated - that is, each such person is equally responsible with you, just as if that person were the only one to sign this agreement." (emphasis added) (Sec'y Stat., Ex. B, p. 2.)

Moreover, even if the terms of a court order allocate half of the responsibility for the alleged indebtedness to Petitioner's ex-wife, "Petitioner remains liable to HUD for payment of the Note pursuant to the terms of the Note and existing law." *Terri Kutz*, HUDOA No. 09-M-NY-KK08 (March 20, 2008). The terms of the divorce only determine the rights and liabilities between Petitioner and his ex-wife, and do not bind their creditors. *See Pee Dee State Bank v. Prosser*, 367 S.E.2d 708, 712 (S.C. App. 1988) (overruled in part on other grounds); *Kimberly S. King (Theide)*, HUDBCA No. 89-4587-L74 (April 23, 1990); *see also Cynthia Abernethy*, HUDBCA No. 04-D-NY-AWG39 (March 23, 2005). The Secretary may proceed against any signatory for the full amount of the debt. *Terri Kutz*, HUDOA No. 09-M-NY-KK08 (March 20, 2008.) Although Petitioner may be able to seek indemnification from other signatories on the Note, this does not prevent HUD from seeking payment solely against Petitioner. *Id.* Therefore, I find that Petitioner is jointly and severally liable to HUD for the full amount of the alleged debt.

Second, Petitioner states, "I am fully aware of this debt and fully aware of the terms of repayment but I am unable to live and pay the amount of \$374.24 per pay period. . . I propose a monthly garnishment of \$300.00" (Pet'r Hr'g Req.) Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that the terms of the repayment schedule would cause a financial hardship. Petitioner, however, has not produced any documentary evidence to prove financial hardship, thus, failing to meet his burden of proof. This Office has previously held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or unenforceable." *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (*citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, Petitioner's claim fails for lack of proof.

Additionally, Petitioner was specifically ordered by this Court to file documentary evidence to prove that all or part of the alleged debt in this case is either unenforceable or not past due, first, in the Notice of Docketing and, subsequently, in the Order dated February 1, 2011 ("Order"). The Order stated that "[f]ailure to comply with this Order may result in a decision based on the documents in the record of this proceeding." (emphasis in original) (Order.) In light of Petitioner's failure to comply with the Orders, I find that sanctions pursuant to 24 C.F.R. § 26.4 are justified. 24 C.F.R. § 26.4(a) states that "[t]he hearing officer may sanction a person, including any party or representative for failing to comply with an order...; failing to prosecute

or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.” 24 C.F.R. § 26.4(a) (2010). Therefore, pursuant to 24 C.F.R. § 26.4(c), which sets forth the specific sanctions that may be imposed, including “any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party...” (24 C.F.R. § 26.4(a)), I find that a determination against Petitioner is appropriate. Accordingly, I find that Petitioner has not met his burden of proof, and that the debt in this case is past due and enforceable in the amount alleged by the Secretary.

Finally, although Petitioner requests a monthly payment plan of \$300.00, this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Petitioner may wish to discuss this matter with Counsel for the Secretary or Mr. Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a review of his financial status by submitting a Title I Financial Statement (HUD Form 56142) to his local HUD Office.

ORDER

For the reasons set forth above, this Office finds the debt that is the subject of this proceeding to be past due and 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 15% of Petitioner’s monthly disposable pay until fully paid.



H. Alexander Manuel
Administrative Judge

May 23, 2011