



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

In the Matter of:

James Harrell,
Petitioner

HUDOA No. 11-M-CH-AWG57
Claim No. 721006721

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Pro Se

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DECISION AND ORDER

On February 17, 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"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), 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 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. 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 any proposed 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), this Office stayed the issuance of a wage withholding order on February 28, 2011, until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral (“Notice of Docketing”), dated February 28, 2011.)

Background

On May 20, 2008, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note (“Note”) in the amount of \$5,262.60 in consideration of foreclosure relief being granted by the Secretary. (Secretary’s Statement (“Sec’y Stat.”), filed March 21, 2011, ¶ 2; Ex. B.) The Note provides that payment becomes due upon the occurrence of certain events or conditions. (*Id.* at ¶ 3.) One such event is the payment in full of Petitioner’s primary mortgage note underlying the Note. (*Id.*) On or about April 27, 2010, the FHA insurance on Petitioner’s primary note was terminated, as the lender informed the Secretary the note was paid in full. (*Id.* at ¶ 3; Ex. A, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated March 18, 2011, ¶ 4.)

Petitioner failed to make payment on the Note at the place and in the amount specified in the Note. (Dillon Decl., ¶ 5.) HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec’y Stat. ¶ 5; Ex. A, ¶ 5.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$2,527.49 as the unpaid principal balance as of February 28, 2011;
- (b) \$0.00 as the unpaid interest on the principal balance at 1% per annum through February 28, 2011; and
- (c) interest on said principal balance from March 1, 2011 at 1% per annum until paid.

(*Id.*; Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated January 27, 2011, was mailed to Petitioner. (Sec’y Stat. ¶ 4; Ex. A, ¶ 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 with HUD, but Petitioner has not entered into such an agreement. (Sec’y Stat. ¶ 4; Dillon Decl., ¶ 6.) Despite attempts to obtain Petitioner’s current pay statement, Petitioner has not provided the pay statement to HUD. (Sec’y Stat. ¶ 8; Ex. A, ¶ 7.) The Secretary’s proposed repayment schedule is \$75.00 per month, which will liquidate the debt in approximately three years, or 15% of Petitioner’s disposable pay. (Sec’y Stat. ¶ 9 Ex. A, ¶ 7.)

Discussion

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 or that the amount of the alleged debt is incorrect. Petitioner may also present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to Petitioner, or that collection of the debt may not be pursued by operation of law. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner disputes the existence of the debt in this case. (Petitioner’s Request for a Hearing (“Pet’r Hr’g Req.”), filed February 17, 2011.)

On three separate occasions, this Office ordered Petitioner to file documentary evidence to prove that the debt in this case is not enforceable or past due. In the Notice of Docketing, this Office ordered Petitioner to “file [on or before April 12, 2011] documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due.” (Notice of Docketing, p. 2.) On June 9, 2011, this Office again ordered Petitioner to “file [on or before June 28, 2011] documentary evidence to prove that all or part of the alleged debt in this case is not past due or not legally enforceable.” (Order, dated June 9 (“June 9 Order”), 2011.) The Order stated, “Failure to comply with this Order shall result in a decision based upon the documents in the record of this proceeding, or possible sanctions, including dismissal of Petitioner’s Request for Hearing.” (emphasis in original) (*Id.*) Petitioner was ordered once more, on July 19, 2011, to file his documentary evidence, this time on or before August 15, 2011. (Order, dated July 19, 2011.) The Order again warned Petitioner that failure to file proof or evidence could result in the dismissal of his case.

Petitioner failed to file evidence that the alleged debt is unenforceable or not past due, as ordered. This Office has held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” *Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (*citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Since Petitioner does not offer any evidence that would prove that the debt is unenforceable, I find that Petitioner’s argument fails for want of proof.

Furthermore, this Office finds the issuance of a sanction against Petitioner under 24 C.F.R. § 26.4 to be appropriate. 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 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.

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.



H. Alexander Manuel
Administrative Judge

September 28, 2011