



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

In the Matter of:

Doyle Adams,

Petitioner.

HUDOA No. 11-M-CH-AWG68
Claim No. 5286287 HAS 9232

Doyle Adams
1925 Farm Road 2118
Bagwell, TX 75412

Pro se

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For the Secretary

DECISION AND ORDER

On March 21, 2011, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to 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 by means of administrative wage garnishment if contested by a debtor. 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 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 March 24, 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, dated March 24, 2011.)

Background

On or about January 21, 1988, Doyle Adams ("Petitioner") executed and delivered to A-1 Mobile Homes, Inc., a Disclosure Statement, Retail Installment Sales Contract and Security Agreement ("Note") in the amount of \$22,775.21. (Secretary's Statement ("Sec'y Stat."), filed April 21, 2011, ¶ 2, Ex. A.) The Note was subsequently assigned to Ginnie Mae. ("Sec'y Stat., ¶ 20, Ex. B; Declaration of Christopher C. Haspel ("Haspel Decl."), Director of the Mortgage-Backed Securities Monitoring Division of the Governemnt National Mortgage Association ("Ginnie Mae") within HUD, ¶ 4.)

HUD has made efforts to collect on the Note to no avail. Petitioner is in default and is indebted to HUD in the following amounts:

- (a) \$10,506.14 as the unpaid principal balance;
- (b) \$3,321.88 as the unpaid interest on the principal balance at 13.75% per annum through April 11, 2011; and
- (c) \$916.41 the administrative costs.

(Sec'y Stat., ¶ 7; Haspel Decl., ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated January 11, 2011 was sent to Petitioner. In the Notice, Petitioner was afforded the opportunity to enter into a written repayment agreement. (Haspel Decl., ¶ 7.) The Secretary proposes a garnishment amount of 10% of the Petitioner's income, which is less than the 15%. (Sec'y Stat., ¶ 9; Dillon Decl. ¶ 8.)

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 due to operation of law. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner argues that he disputes the existence of the debt. Petitioner also argues that, "I think you have the wrong person on this debt. I have lived at this address for the last 30 years. I live in a mobile home. Please call as soon as possible. Thank you." (Petitioner's Hearing Request, dated March 21, 2011.) On March 24, 2011, this Office ordered Petitioner to file documentary evidence to support his claim. (Notice of Docketing, p. 2.) The Notice of Docketing stated that "Petitioner shall file documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due. This documentary evidence may be attached to a short petition supported, where necessary, by affidavit setting forth Petitioner's contentions and relevant legal argument." (emphasis in original) (*Id.*) This Office also ordered Petitioner to file documentary evidence in support of her position on May 17, 2011.

Petitioner failed to respond to both the March 24, 2011 and May 17, 2011 Orders, and is therefore subject to the sanctions set forth at 24 C.F.R. §26.4(a)¹ and 24 C.F.R. § 26.4(c)². 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)). Petitioner has failed to submit any documentary evidence to prove her financial hardship claim and has failed to comply with the Orders issued by this Office. Since Petitioner does not offer any evidence to support her claim that she does not owe the debt in this case or that administrative wage garnishment in the amount proposed by the Secretary would create a financial hardship, this Office finds that Petitioner’s argument fails for want of proof.

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 10% of the Petitioner’s disposable income, instead of the Federal Agency 15% allowed amount.



H. Alexander Manuel
Administrative Judge

July 14, 2011

¹ 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, rule, or procedure governing the proceeding; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.”

² 24 CFR §26.4(c) 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 . . .”