



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

In the Matter of:

Randall W. Hodges,
Petitioner

HUDOA No. 11-M-CH-AWG98
Claim No. 52-0883319LO

Randall W. Hodges
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Pro se

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DECISION AND ORDER

On May 9, 2011, Petitioner filed a request for 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 have been 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 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 a 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) and (f)(10), on May 12, 2011, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision.

Background

HUD is the holder of a Manufactured Home Retail Installment Sales Contract & Security Agreement signed by Petitioner and A-1 Mobile Homes, dated April 23, 1990 (the "Note"), (Secretary's Statement ("Sec'y Stat."), dated June 6, 2011, ¶ 1; Declaration of Christopher C. Haspel, Director, Mortgage-Backed Securities Monitoring Division, of the Government National Mortgage Association ("Ginnie Mae") within HUD ("Haspel Decl."), dated June 2, 2011, ¶ 1, Ex. B.)

The Contract was then assigned to SAMCO (Sec'y Stat. ¶2; Ex. B, Haspel Decl., ¶3 and Ex. C. Assignment to SAMCO). Then on April 4, 1991, the Contract was assigned from SAMCO to Ginnie Mae, Sec'y Stat. ¶3; Ex. B; Haspel Decl. ¶4, and Ex. D, Assignment from SAMCO to Ginnie Mac.

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 4; Ex. B, Haspel Decl., ¶ 6.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

- (a) \$12,601.11 as the unpaid principal balance as of June 2, 2011;
- (b) \$5,713.77 as the unpaid interest on the principal balance at 13.50% per annum through June 2, 2011;
- (c) \$2,235.54 as administrative costs; and
- (d) \$2,317.91 as penalty

(Sec'y Stat., ¶ 5; Ex. B, Haspel Decl., ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated April 21, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 6; Ex. B, Haspel Decl., ¶ 7.) 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 under mutually agreeable terms.

Petitioner filed an appeal and request for hearing on May 9, 2011. The Petitioner claims "They repossessed that trailer in 2003 so why should I pay for something I don't have. They have also been keeping my income tax every year for 5 or 6 years. So where is the justice?" The Petitioner's mobile home was sold at auction for \$1,250.00 and the monies credited to the his account. (Ex. B, Haspel Decl. ¶ 8, Ex. F, Case Financial History). However, the sale of the mobile home does not eliminate the outstanding debt.

The Petitioner also made three Treasury Offset Payments totaling \$7,259,00, which was credited to his account (Sec'y Stat. ¶7, Ex. B, Haspel Decl. ¶8, and Ex. 7, Case Financial History). There still remains an outstanding balance. *Id.*

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, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause a financial hardship. Petitioner disputes the terms of the proposed garnishment. (Petitioner's Request for a Hearing ("Pet'r Hr'g Req."), filed May 9, 2011.)

The Secretary, on the other hand, met his burden of proof to show the terms of the repayment schedule by filing his Statement, setting forth documentary evidence in support of his claim against Petitioner for the debt owed to HUD.

Petitioner on the other hand, has not met his burden to provide 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 pursuant to 31 C.F.R. § 285.11(f)(8)(ii). 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.

Finally, a finding against Petitioner is justified on the basis of his noncompliance with the Orders issued by this Office. This Office ordered Petitioner to file documentary evidence to prove that all or part of the alleged debt to HUD in this case is unenforceable or not past due, that repayment of the debt would cause her financial hardship, or that collection of the debt may not be pursued due to operation of law. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated May 12, 2011.) A second Order was issued ordering Petitioner to file documentary evidence as sought in the Notice of Docketing, "on or before January 19, 2012." (Order, dated January 4, 2012.) This 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). (*Id.*) Petitioner failed to comply with both Orders.

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.

ORDER

For the reasons stated above, it is

ORDERED that the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment, entered on May 12, 2011, is **VACATED**. It is

FURTHER ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at the maximum rate authorized by law.



H. Alexander Manuel
Administrative Judge

February 16, 2012