



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

In the Matter of:

Bryan Moore,
Petitioner

HUDOA No. 11-M-NY-AWG120
Claim No. 721006720

Kenneth J. Riemer
Underwood & Riemer, P.C.
166 Government Street, Suite 100
Mobile, AL 36602

Counsel for Petitioner

Amy Jo Conroy, Esq.
US Department of Housing and
Urban Development
Office of Assistant General Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

Counsel for the Secretary

DECISION AND ORDER

On July 19, 2011, 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" or "Government"). 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 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. 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 April 25, 2006, Petitioner executed and delivered a Partial Claims Promissory Note ("Note" or "Subordinate Note") to the HUD Secretary in the amount of \$8,674.10. (Secretary's Statement ("Sec'y Stat."), ¶ 4, filed August 17, 2011; Ex. A, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated August 16, 2011, ¶ 4.) In exchange, HUD advanced funds to Petitioner's lender, Chase Manhattan Mortgage Corporation ("Chase") to bring Petitioner's primary home mortgage current, thereby preventing foreclosure. (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 4.)

The Subordinate Note cites specific events that make the debt become due and immediately payable. One of these events is the payment in full of the primary mortgage. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 4; Ex. B, Note, ¶ 3(A)(i).) The Note also specifies that Petitioner must make payment at:

Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410, or any such other place as [HUD] may designate in writing by notice to Borrower.

(Note, 3(B).)

On or about April 13, 2010, the FHA insurance on Petitioner's primary mortgage was terminated when the lender notified the Secretary that the mortgage had been paid in full. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner failed to make payment at the place and in the amount specified in the Note. (Sec'y Stat., ¶ 7.)

HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec'y Stat. ¶ 2; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$8,674.10 as the unpaid principal balance as of July 31, 2011;
- (b) \$101.22 as the unpaid interest on the principal balance at 1% per annum through July 31, 2011;
- (c) interest on said principal balance from August 1, 2011, at 1% per annum until paid.

(Sec'y Stat., ¶ 9; Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated June 20, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 6.) 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., ¶ 11; Dillon Decl., ¶ 7.) Petitioner has not entered into such an agreement.

The Secretary has been unable to obtain a copy of Petitioner's current pay statement. (Sec'y Stat., ¶ 15; Dillon Decl., ¶ 8.) The Secretary therefore requests a repayment schedule of either 15% of Petitioner's disposable monthly income, or \$243.76 per month, which will liquidate the debt in approximately three years. (Sec'y Stat., ¶ 15; 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 the sworn testimony of the Director of HUD's Asset Recovery Division and a copy of the Note. (See Sec'y Stat; Ex. A; Ex. B). I find that the Secretary has therefore met his burden.

Petitioner disputes the existence of the alleged debt, and states that the debt "was paid in accordance with the closing of my home." (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), p. 3, filed July 19, 2011; See also Petitioner's Documents ("Pet'r's Docs."), filed September 20, 2011; Ex. A, Affidavit of Bryan Moore.) Specifically, Petitioner contends that Chase combined the primary mortgage and the HUD loan under one loan number, which Petitioner paid to Chase on a monthly basis. (Pet'r's Docs., p. 1.)

Prior to selling the home, Petitioner states he was told by Chase that the mortgage payoff amount of \$99,258.42 reflected both mortgages. (*Id.* at p. 2.) Petitioner has filed as documentary evidence copies of several documents, including the primary mortgage note, the Subordinate Note, a "Breakdown of Amount Owed" sheet from Chase, and the HUD-1 Settlement Statement relating to Petitioner's 2010 sale of the home. (*Id.*)

The Secretary counters that (1) HUD, not Chase, is the holder of the Subordinate Note, and thus payment was owed to HUD; (2) the terms of the Note do not authorize Chase to receive payments on HUD's behalf, and; (3) Petitioner has failed to file evidence proving that HUD received any portion of the \$99,258.42 payoff figure. (Supplemental Secretary's Statement ("Supp. Sec'y Stat."), filed October 14, 2011.)

This Court agrees that HUD is the legal holder of the Note. Petitioner's claim that he "entered into a Subordinate Note agreement, *through Chase*, for a loan in the amount of \$8,674.10" is not supported by the evidence in the record. (Pet'r's Docs., p. 1) (emphasis added). Section 1 of the Partial Claims Promissory Note identifies the "Lender" as "the Secretary of Housing and Urban Development and its successors and assigns." (Sec'y Stat., Note, p. 1.) The Subordinate Mortgage, similarly, states that "This Security Instrument is given to the Secretary of Housing and Urban Development ... (Lender)." (Pet'r's Docs.; Ex. D, p. 1.) Petitioner thus knew or should have known that HUD was the holder of the Note, and that any debts owed on this loan should be payable to HUD.

Petitioner has failed to file evidence indicating an intention by HUD to abandon or transfer its interests in the Note to Chase. Petitioner has also failed to provide evidence substantiating his claim that Chase combined the two loans or required him to make payments on the HUD loan. This Court has long held that assertions without evidence are insufficient to show that an alleged debt is not past due. *See Sara Hedden*, HUDOA No. 09-H-NY-AWG95 (July 8, 2009) (quoting *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Consequently, I find that Petitioner has failed to prove that HUD abandoned or transferred its right to collect the alleged debt. The Secretary is the legal holder of the Note, which remains past due and legally enforceable against Petitioner.

As holder of the Note, any debts due upon it were owed to HUD. The terms of the Note describe the only authorized procedures for repayment of the debt. Nothing in the Note authorized Chase to combine the primary and subordinate loans or to accept payment for the Subordinate Note on HUD's behalf. Petitioner has provided no evidence that such an authorization exists elsewhere. Thus, as the Secretary states, any payments on the HUD loan made to Chase were made "in contravention of the terms of the Partial Claims Promissory Note." (Supp. Sec'y Stat., ¶ 8.)

To avoid liability for the debt, Petitioner must prove that the debt has been paid in full or provide either (1) a written statement from HUD releasing him from this debt, or, (2) evidence of valid or valuable consideration accepted by HUD as satisfaction of the debt. *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); *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

Petitioner here does not argue that HUD has released him from his obligation to pay the alleged debt. Rather, Petitioner offers the payoff amount of \$99,258.42 as evidence that the HUD debt was repaid. However, the evidence does not show that HUD received or accepted any monies from the payoff.

As the Secretary notes, Petitioner's HUD-1 Settlement Statement is strong evidence that the HUD loan was not included in the payoff calculation. (Supp. Sec'y Stat.; Ex. A, Supplemental Declaration of Brian Dillon ("Supp. Dillon Decl."), ¶ 3.) Lines 504 and 505 of the HUD-1 identify settlement amounts used to pay off the first and second mortgages, respectively. Line 504 shows a payment of \$99,258.42. Line 505 is blank. (Pet'r's Docs.; Ex. F, p. 1.) The entire payoff amount thus appears to have gone towards the primary mortgage.

This conclusion is confirmed by the "Breakdown of Amount Owed" sheet created by Chase prior to Petitioner's 2010 sale of the home. The sheet provides an itemized description of all fees making up the \$99,258.42 payoff figure. (Pet'r's Docs.; Ex. E, p. 1.) The HUD debt does not appear among the items listed. Petitioner therefore knew or should have known that the alleged debt to HUD was not part of the payoff amount, and was not repaid as part of the sale of

Petitioner's home, regardless of any assertions to the contrary made by Chase. The debt, therefore, remains overdue and enforceable against Petitioner.

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

November 22, 2011