



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

In the Matter of:

RICKY WILDER,

Petitioner.

HUDOA Nos. 11-M-NY-AWG61

Claim No. 5539677 LL 9244

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Pro se

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DECISION AND ORDER

On February 22, 2011, this Office received Petitioner's request for a hearing concerning the proposed administrative wage garnishment of his income relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary"). 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 an alleged debt 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 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), on February 28, 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.)

Background

On March 30, 1993, Petitioner executed and delivered to Logan-Laws Financial Corporation (“Logan Laws”), a Manufactured Home Promissory Note, Security Agreement and Disclosure Statement (“Note”) in the amount of \$30,000.00, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable and Secretary’s Proposed Repayment Schedule (“Sec’y Stat.”), ¶ 1; Ex. A, Note.) Logan Laws was defaulted as an insurer of Mortgage Backed Securities (“MBS”) due to its failure to comply with the Government National Mortgage Association’s (“GNMA”) MBS program requirements. (Sec’y Stat., ¶ 3; Declaration of Christopher C. Haspel, Director, Mortgage-Backed Securities Monitoring Division, Government National Mortgage Association, U.S. Department of Housing and Urban Development (“Haspel Decl.”), ¶ 4.) Upon default by Logan-Laws, all of its rights, title, and interest in Petitioner’s loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Logan-Laws and GNMA. (Sec’y Stat. ¶ 4.) As GNMA is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (*Id.* at 5.)

The Secretary has filed a statement alleging that Petitioner is currently in default on the Note. (*Id.* at 6.) The Secretary has made efforts to collect from Petitioner, but has been unsuccessful. (*Id.*) The Secretary alleges Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$380.23 as the unpaid principal balance; and
- (b) \$0.00 as the unpaid interest on said principal balance at 13% per annum through March 17, 2011.

(*Id.* at ¶ 6; Haspel Decl., ¶ 6.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated December 21, 2010, was sent to Petitioner. (Sec’y Stat. ¶ 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 but has not done so. (*Id.* at ¶ 8.) The Secretary proposes a repayment schedule of 10% of Petitioner’s disposable pay. (*Id.* at ¶ 11.)

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).

In his request for a hearing, Petitioner disputed the existence of the debt and claimed, “[m]y wife was award [sic] the house in 2000 in March. We were separated in 1998 and she was giving [sic] the house by Judge, and all access!” (Pet’r’s Hr’g Req.) However, Petitioner has not filed any evidence to support his claims despite being ordered to do so by this Office on three occasions. In the Notice of Docketing, dated February 28, 2011, this Office ordered Petitioner to “file documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due” within 45 days. (Notice of Docketing, 2.) On May 17, 2011 this Office again ordered Petitioner to file his documentary evidence on or before June 3, 2011 and warned that, “[f]ailure to comply with this Order may result in a dismissal of this request for hearing or a decision based upon the documents in the record of this proceeding.” (emphasis in original) (Order, dated May 17, 2011.) The last Order to Petitioner on July 19, 2011, required Petitioner to file his documentary evidence on or before August 15, 2011 and warned that “[f]ailure of Petitioner to file a timely response to this Order shall result in a decision based on the documents in the record of this proceeding, or possible sanctions, including dismissal of Petitioner’s Request for Hearing.” (emphasis in original) (Order, dated July 19, 2011.)

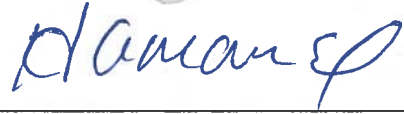
Petitioner has failed to file any evidence proving that the alleged debt in this case is unenforceable or not past due and has, therefore, failed to comply with the orders issued by this Office. This Office has held that “[a]ssertions without evidence are not sufficient to show that the debt claimed 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)). As Petitioner has not filed any evidence in support of his claim that he does not owe the debt, this Office finds that Petitioner’s argument fails for want of proof.

Additionally, this Office finds it appropriate to sanction against Petitioner under 24 C.F.R. § 26.4. 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)), this Office finds 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 in the amount of 10 percent of Petitioner’s disposable pay.



H. Alexander Manuel

H. Alexander Manuel
Administrative Judge

September 29, 2011