



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

In the Matter of:

**Daniel Lovis,**  
Petitioner

HUDOA No. 11-M-NY-AWG76  
Claim No. 78-0648264

Daniel Lovis  
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*Pro Se*

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**DECISION AND ORDER**

On April 4, 2011, Petitioner filed a request for a hearing concerning an 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 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. Pursuant to 31 C.F.R. § 285.11(f)(10)(ii), HUD must suspend the currently active wage withholding order, beginning on the 61st day after receipt of the hearing request and continuing until a written decision has been rendered. (Notice of Docketing, Order and Stay of Referral ("Notice of Docketing") 3; issued Apr. 5, 2011.)

## Background

On July 30, 1997, Petitioner executed and delivered a mortgage note ("Note") to First Federal Savings and Loan Association of Greene County ("First Federal") in the amount of \$17,500. (Secretary's Statement ("Sec'y Stat.") ¶ 2, filed April 27, 2011; Ex. A, Note.) The Note was insured against nonpayment by HUD, pursuant to the National Housing Act, 12 U.S.C. § 1712(g). (*Id.*)

First Federal assigned the Note to the HUD Secretary on November 17, 2004, after Petitioner failed to make payment on the Note. (*Id.* ¶ 3.) The Secretary has attempted to collect the alleged debt, but has been unsuccessful. (*Id.* ¶ 4; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl.") ¶ 4, dated April 19, 2011.)

The Secretary contends that Petitioner is currently in default on the Note, and is therefore indebted to HUD in the following amounts:

- (a) \$11,404.69 as the unpaid principal balance as of March 31, 2011;
- (b) \$560.50 as the unpaid interest on the principal balance at 1% per annum through March 31, 2011 until paid;
- (c) \$4,306.90 as penalties and administrative costs through March 31, 2011; and
- (d) interest on said principal balance from April 1, 2011, at 1% per annum until paid.

(Sec'y Stat. ¶ 4; Dillon Decl. ¶ 4.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner on January 25, 2011. (Sec'y Stat. ¶ 5; Dillon Decl. ¶ 5.) Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), the Notice afforded Petitioner the opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec'y Stat. ¶ 6; Dillon Decl. ¶ 6.) To date, Petitioner has not entered into such an agreement. (Sec'y Stat. ¶ 6; Dillon Decl. ¶ 6.)

On March 3, 2011, HUD issued a Wage Garnishment Order to Petitioner's employer. (Sec'y Stat. ¶ 13; Dillon Decl. ¶ 9; Ex. B, Wage Garnishment Order.) No garnishment payments have been received in response to the garnishment order. (Sec'y Stat. ¶ 14; Dillon Decl. ¶ 10.)

Based on Petitioner's bi-weekly pay statement, the Secretary proposes a bi-weekly repayment schedule of \$188.14, which is 15% of Petitioner's disposable income. (Sec'y Stat. ¶ 15, Dillon Decl. ¶ 11; Ex. C, Petitioner's Pay Statement.)

## Discussion

The Secretary has 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. 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.*)

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, a copy of the Note, and a copy of the Note's assignment to HUD. The Note states the loan amount as \$17,500 and appears to be correctly dated, notarized, and signed by Petitioner. (Sec'y Stat., Ex. A, at 1.) The Secretary has therefore met his burden.

Petitioner contests the existence and amount of the alleged debt at issue in this case and states that the garnishment will cause financial hardship. (Petitioner's Hearing Request ("Pet'r's Hr'g Req.") 1, filed April 4, 2011; Petitioner's Letter ("Pet'r's Letter"), filed April 28, 2011.) Specifically, Petitioner argues that (1) the subject debt was paid from the proceeds of the foreclosure sale of the secured property; (2) he was never notified of the existence of the debt; (3) the garnishment will result in financial hardship; (4) he had previously filed for bankruptcy protection; and (5) he did not receive the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice").

First, Petitioner contends that the alleged debt was paid from the proceeds of the foreclosure sale of his home in 2006. (Pet'r's Hr'g Req.) HUD claims it has not received any payment as a result of the sale, and asserts that an unpaid principal balance of \$11,404.69 remains due and presently owing. (Sec'y Stat. ¶ 8; Dillon Decl. ¶ 7.)

Petitioner acknowledges obtaining a \$17,500 home improvement loan from First Federal in 1997. (Pet'r's Letter 2.) He also admits that he still owed approximately \$11,000 on the loan when First Federal foreclosed on the home, and that he "paid them nothing" prior to being evicted in 2006. (*Id.*) Petitioner's own evidence thereby confirms that he was aware of the remaining \$11,000 balance in 2006, but did not attempt to repay it. Although Petitioner states that the property was purchased by his employer for "more than what the bank was owed," he offers no proof that any excess funds existed, or that those funds were used to resolve his outstanding debt to HUD. (*Id.*)

Without documentary evidence from Petitioner that proceeds from the foreclosure sale were applied to this debt, Petitioner's assertion that the debt "went away when they took my home back" is unpersuasive. This Office has consistently 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 (Jan. 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

Accordingly, I find that Petitioner has not met his burden of proof to show, by a preponderance of the evidence, that the debt does not exist. Petitioner therefore remains indebted to HUD in the amount claimed by the Secretary.

Second, Petitioner questions why First Federal did not inform him of the debt to HUD, and states that, had he been aware of the debt, he would have attempted to resolve it in 2005.

(Pet'r's Letter 1.) First Federal was under no obligation to inform Petitioner of the debt in 2005, as it had assigned all of its interest in the home improvement loan to HUD in 2004. (*See* Sec'y Stat., Ex. A, at 2.) The Note, signed by Petitioner, clearly gives First Federal the right to assign the Note to a third party, as it did here.

Petitioner also argues that the wage garnishment action "should not include all those fees and costs" because HUD could have initiated the action in 2005, thereby avoiding the accumulation of unpaid interest and administrative costs. (Pet'r's Letter 2.) Again, however, this argument is undermined by the terms of the Note. Upon failure to make any payment, the holder of the Note may, at their option, choose to void the remaining installment payments, thereby making the note, "*together with any late charge on any unpaid installments,*" immediately due and payable. (Sec'y Stat., Ex. A, Note) (emphasis added.) The Secretary, as holder of the Note, was therefore not obligated to bring this action in 2005.

Petitioner's third argument is that he "cannot possibly afford the amount of money that HUD wants." (Pet'r's Letter 2.) As stated previously, 31 C.F.R. § 285.11(f)(8)(ii) allows a debtor to present evidence that the terms of a repayment schedule would cause a financial hardship for him.

On three separate occasions, this Court ordered Petitioner to file documentary evidence proving his financial hardship claim. In the Notice of Docketing, issued April 5, 2011, Petitioner was ordered to file such evidence no later than May 19, 2011. (Notice of Docketing 2.) The Notice further stated that the evidence must include proof of payment of household expenses. (*Id.*) Petitioner's Letter of April 28, 2011, though largely responsive to the Notice of Docketing's orders, contained no such proof of payment, and no other evidence showing financial hardship.

On May 17, 2011, Petitioner was again ordered to file, "on or before June 17, 2011," documentary evidence of potential financial hardship. (Order, issued May 17, 2011.) The Order instructed Petitioner to "include copies of . . . pay statements, mortgage or rent payments, utility bill payments, medical bills, car payments or transportation receipts, insurance payments, and other payments for essential monthly household expenses." (*Id.*) Petitioner did not comply with this Order.

On July 19, 2011, Petitioner was ordered to file, "on or before August 15, 2011," documentary evidence showing proof of actual payment of necessary household expenses. (Order, issued July 19, 2011.) The Order stated, "Failure to comply with 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." (*Id.*) Petitioner again failed to comply with the Order.

Without documentary evidence of Petitioner's actual living expenses, his claim of impending financial hardship constitutes a mere assertion. As such, it is insufficient to show that the debt is not legally enforceable. Accordingly, I find that Petitioner remains liable for the debt in the amount requested by the Secretary.

Fourth, Petitioner states that he filed for bankruptcy in 2006. (Pet'r's Letter 1.) This assertion is not supported by any documentary evidence in the record, although Petitioner was ordered to produce such evidence in the May 17 and July 19 Orders. Moreover, Petitioner acknowledges in his Petitioner's Letter that HUD was never listed as a creditor in the bankruptcy proceeding. (Pet'r's Letter 1.)

Finally, Petitioner argues that he did not receive the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings. (Pet'r's Hr'g Req; Pet'r's Letter 1.) Pursuant to 31 C.F.R. § 285.11(e), a written notice is to be mailed by first class mail to a debtor's last known address at least 30 days before initiating a wage garnishment action. The Secretary asserts that HUD sent Petitioner the Notice on January 25, 2011, and did not issue the garnishment order until March 3, 2011. (Sec'y Stat. ¶ 5; Dillon Decl. ¶ 5.)

HUD has included a copy of an Experian Social Search Report as evidence of the Secretary's good-faith attempt to determine Petitioner's last known address. Petitioner's current street address — 10 Mountain Avenue, Uniontown, PA 15401-4600 — is present on the report, appearing as first reported on January 10, 1996. (Sec'y Stat. ¶ 11; Ex. C, Experian Social Search Report 1.) However, the most recent address on the report is "PO Box 1592, Uniontown, PA 15401-1592," first reported on August 11, 1997. The Notice, sent to the PO Box, was returned by the U.S. Postal Service as "attempted not known." (Sec'y Stat. ¶ 11; Dillon Decl. ¶ 8.) HUD does not contend that it ever sent the Notice to the 10 Mountain Avenue address.

Petitioner asserts that HUD's mailing of the Notice to the PO Box rather than the 10 Mountain Avenue address was not reasonable, as Petitioner had continuously resided at the physical address since 1996. (Pet'r's Letter 1.) Petitioner further notes that his telephone number associated with the 10 Mountain Avenue address has also remained continuously listed since 1996, and so could have been easily discovered by HUD. (*Id.*)

I find Petitioner's statement that he has continuously maintained a residence at 10 Mountain Avenue to be credible. The Secretary could have discovered Petitioner's address with minimal effort. Indeed, 10 Mountain Avenue is the only physical address listed on the Experian Social Search Report. No additional information on that report, or anywhere else in the record, suggests Petitioner ever vacated that location. Yet the Secretary did not attempt to mail a Notice to that address, even after the Notice sent to the PO Box was returned as "attempted not known." In light of the relative ease with which the Secretary could have uncovered the 10 Mountain Avenue address, I find that HUD's reliance on the Experian Report was unreasonable. The wage withholding order issued on March 3, 2011, being improperly noticed, is therefore void.

The Secretary's Statement, filed on April 27, 2011, asserted that HUD had not received any payments from Petitioner's employer in response to the wage withholding order. (Sec'y Stat. ¶ 14; Dillon Decl. ¶ 10.) Pursuant to 31 C.F.R. § 285.11(f)(10)(ii), a previously issued withholding order must be suspended 61 days after receipt of the hearing request, and remain suspended until a written decision is issued. Accordingly, no garnishment of Petitioner's wages stemming from the March 3, 2011 withholding order could have occurred after June 5, 2011. Because there is no evidence that any garnishment payments occurred between April 27 and June 5, it does not appear that Petitioner has suffered any injury from HUD's improper notice. To the

extent HUD received any garnishment payments subsequent to April 27, these funds must be immediately refunded to Petitioner.

**ORDER**


For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is to remain in place **INDEFINITELY**. It is hereby

**ORDERED** that the Secretary is not authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law. It is

**FURTHER ORDERED** that any amounts garnished from Petitioner's wages prior to the date of this Order shall be promptly refunded to Petitioner.

This matter is **DISMISSED** without prejudice, with leave for the Secretary to re-file after providing Petitioner with appropriate notice.

November 22  
10, 2011  
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H. Alexander Manuel  
Administrative Judge