



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

In the Matter of:

Rolando Richard,
Petitioner

HUDOA No. 10-H-CH-AWG112
Claim No. 721002334

Rolando Richard
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Spring, TX 77380

Pro se

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For the Secretary

DECISION AND ORDER

On July 29, 2010, 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"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment 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 by means of administrative wage garnishment if the debt is contested by a debtor. 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 August 13, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage

withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated August 13, 2010.)

Background

Petitioner executed and delivered to the Secretary a Subordinate Note (“Note”) to secure a partial claim paid on his behalf by the Secretary to pay the arrearages on his primary FHA-insured mortgage and avoid the foreclosure of his home. (Secretary’s Statement (“Sec’y Stat.”), filed August 30, 2010, ¶ 1, Ex. #1.) The original amount to be repaid under this Subordinate was \$6,998.04. (Sec’y Stat., ¶ 2, Ex. #1.) The Note cites specific events that made the debt become due and payable, one of these events being if the Petitioner had paid in full all amounts due under the primary note and related mortgage insured by the Secretary. (Id.) On or about November 3, 2004, the FHA mortgage insurance on the first mortgage was terminated, as the lender indicated the mortgage was paid in full. (Sec’y Stat., ¶ 4, Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, Financial Operations Center of HUD (“Porter Decl.”), dated August 30, 2010, ¶ 4.)

HUD has attempted to collect on the claim from Petitioner, but Petitioner remains delinquent. Petitioner is indebted to HUD on the claim in the following amounts:

- (a) \$5,000.45 as the unpaid principal balance as of July 30, 2010;
- (b) \$33.34 as the unpaid interest on the principal balance at 4% per annum through July 30, 2010; and
- (c) interest on said principal balance from August 1, 2010, at 4% per annum until paid.

(Sec’y Stat., ¶ 6, Ex. #2, Porter Decl., ¶ 5.)

A Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings dated June 23, 2010 was sent to Petitioner.¹ (Porter 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. As of this date, Petitioner has not entered into a written repayment agreement. (Sec’y Stat., ¶ 8, Porter Decl., ¶ 7.) As a result, the Secretary respectfully submits that a reasonable amount to garnish is \$150.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 9, Porter 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 terms of the proposed repayment

¹ While the Secretary states in ¶ 7 of his Statement that: “a Notice of Intent to Collect by Treasury Offset was mailed to Petitioner on February 4, 2010,” it has come to the attention of this Office that a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, not a Notice of Intent to Collect by Treasury Offset, was in fact issued to Petitioner on June 23, 2010, and not on February 4, 2010. As a result, this Office elected to cite to paragraph 6 of the Declaration of Kathleen Porter and rely on the copy of the Notice of Intent submitted with the Petitioner’s July 29, 2010 Hearing Request as the more accurate accounting of this fact.

schedule would cause him financial hardship. Petitioner states that he did not owe the alleged debt because it did not exist. Petitioner claims more specifically that: "This amount was taking [sic] out when the house was sold." (Petitioner's Request for Hearing, dated July 29, 2010). To date, Petitioner has failed to provide the necessary documentation in support of his claim.

The Secretary argues, on the other hand, that the Petitioner's debt became due when the first mortgage was paid in full. As support, the Secretary submitted a copy of the Subordinate Note bearing Petitioner's signature, in which Petitioner accepted and agreed to the terms and covenants of the Subordinate Note. (Sec'y Stat., Attach Note, p.2; Porter Decl., ¶ 4.) According to the Secretary, "on or about November 3, 2004 the FHA insurance on the first mortgage was terminated, as the lender indicated the mortgage was paid in full." (Sec'y Stat., Ex. 2, Porter Decl. ¶ 4.) Consistent with the terms and conditions of the Subordinate Note, Petitioner is now legally obligated to pay the debt that is the subject of this proceeding.

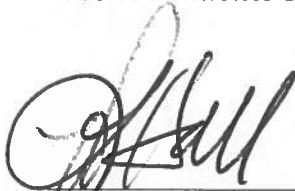
While the Petitioner was ordered on three occasions to file documentary evidence which will prove that the alleged debt is either unenforceable or not past due, Petitioner failed to comply with any of the Orders issued by this Office. (Notice of Docketing, dated August 13, 2010; Order, dated August 31, 2010, and Order to Show Cause, dated October 1, 2010.) 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 enforceable." *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, without any documentary evidence from Petitioner to refute or rebut the Secretary's claim and supporting documentation, I find that Petitioner's claim challenging the amount of the alleged debt must fail for lack of proof.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding is 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 at 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

November 22, 2010