



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

In the Matter of:

Daryl Shouse,

Petitioner

HUDOA No. 10-H-CH-AWG38
Claim No. 780707003

Daryl Shouse
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Springfield, MO 65803-2509

Pro se

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For the Secretary

DECISION AND ORDER

On January 19, 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 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 by means of administrative wage garnishment if the debt is contested by a debtor. 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 (10), on January 27, 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.

Background

On February 4, 2004, Petitioner executed and delivered to Royal Windows & Siding and First Commercial Bank a FHA Title I Home Improvement Retail Installment Contract and Disclosure Statement ("Note") in the amount of \$5,776.00 for a home improvement loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y Stat."), filed February 12, 2010, ¶ 1, Ex. 1.) After default on the loan by Petitioner, the Note was assigned to HUD by First Commercial Bank under the regulations governing the Title I Insurance Program. (*Id.* at ¶ 2, Exs. 1 and 2, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated February 5, 2010, ¶ 3.)

The Secretary has made efforts to collect from Petitioner but has been unsuccessful. (Sec'y Stat., ¶ 3, Ex. 2, Dillon Decl., ¶ 4.) Petitioner is justly indebted to HUD in the following amounts:

- (a) \$4,866.40 as the unpaid principal balance as of January 31, 2010;
- (b) \$368.80 as the unpaid interest on the principal balance at 3% per annum through February 1, 2010;
- (c) \$621.58 as the penalties as of February 1, 2010;
- (d) \$176.66 as the administrative costs as of February 1, 2010; and
- (e) interest on the principal balance from February 1, 2010 at 3% per annum until paid.

(Sec'y Stat., ¶ 4, Ex. 2, Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated December 3, 2009 was sent to Petitioner. (Sec'y Stat., ¶ 5, Ex. 2, Dillon Decl., ¶ 5.) As of February 5, 2010, Petitioner has not entered into a written repayment agreement. (Sec'y Stat., ¶ 6, Ex. 2, Dillon Decl., ¶ 7.) An Administrative Wage Garnishment Order dated January 4, 2010 was issued to Petitioner's employer. (Sec'y Stat., ¶ 7, Ex. 2, Dillon Decl., ¶ 8, Ex. A.) HUD attempted to obtain a copy of Petitioner's current pay stub; as of February 5, 2010, one was not provided. (Sec'y Stat., ¶ 10, Ex. 2, Dillon Decl., ¶ 10.) As a result, the Secretary proposes that \$168.00 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 income, is a reasonable amount to garnish pursuant to 31 C.F.R. § 285.11(i)(A). (Sec'y Stat., ¶ 11, Ex. 2, Dillon Decl., ¶ 10.)

Discussion

Petitioner claims the alleged debt that is the subject of this proceeding does not exist and that he does not owe the debt. Petitioner states "I have just been notified, by my employer, that my wages are to be garnished . . . This is the first I have heard of this, I haven't received notification before now, and as of right now I am disputing the garnishment. I did get a loan

through a bank . . . , but I am still making the payments to them and as far as I know they are still accepting them, so to my knowledge I am not behind in the payments.” (Petitioner’s Request for Hearing, filed January 19, 2010.) Petitioner failed, however, to provide the necessary documentation in support of his claim.

The Secretary asserts, on the other hand, that the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated December 3, 2009, satisfies the notice requirements of 31 C.F.R. § 285.11(e)(2)(ii) as authorized by 24 C.F.R. § 17.170. (Sec’y Stat., ¶ 5.) Furthermore, the Secretary asserts that neither HUD nor First Commercial Bank, the original lender, has received any payments from Petitioner since the default date of February 20, 2008. (Sec’y Stat., ¶ 9, Ex. 2, Dillon Decl., ¶ 9, Ex. B.) Beyond Petitioner’s mere allegations that he did not receive proper notification of his default in payments, Petitioner has failed to produce documentation that successfully rebuts the evidence submitted by the Secretary.

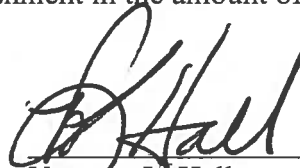
Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), the burden of proof rests with Petitioner to present evidence that no debt exists or that the amount of the debt is incorrect. On three separate occasions, this Office ordered Petitioner to file such evidence in support of his claim. (Notice of Docketing, Order, and Stay of Referral, dated January 27, 2010; Order, dated February 17, 2010; and Order to Show Cause, dated March 10, 2010.) Petitioner failed to comply with the directives set forth in each of these Orders.

Without such evidence Petitioner’s claim fails for lack of sufficient and credible documentary evidence. This Office has held that assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due or enforceable. *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, I find Petitioner’s claim of financial hardship fails for lack of proof.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be past due and 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 in the amount of 15% of Petitioner’s disposable income.



Vanessa L. Hall
Administrative Judge

June 18, 2010