



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

In the Matter of:

Kenneth Winzer,

Petitioner

HUDOA No. 10-H-CH-AWG46
Claim No. 721005829

Kenneth Winzer
9752 Briar Rose Place
Riverside, CA 92503

Pro se

Sara Mooney, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

On January 29, 2009, 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 February 17, 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 February 17, 2010.)

Background

On July 6, 2000, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") in the amount of \$4,760.55, in exchange for foreclosure relief of his primary residence being granted by the Secretary. (Sec'y Stat., ¶ 2, Dillon Decl., ¶ 4.) Payment was due and payable when the borrower paid the primary Note in full, when the maturity date of the primary Note was accelerated, when the Note or related Security instrument was no longer insured by the Secretary or when the property was no longer occupied by the purchaser as his principal residence. (Sec'y Stat., ¶ 2, Attached Note, ¶ 3(A).) On or about January 16, 2004, the FHA insurance on Petitioner's primary note was terminated when the lender informed the Secretary that the Note was paid in full. (Sec'y Stat., ¶ 4, Dillon Decl., ¶ 4.)

The Secretary has attempted to collect from the Petitioner, but Petitioner remains in default. (Sec'y Stat., ¶ 5, Dillon Decl., ¶ 5.) The Secretary has filed a Statement in support of his position that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$4,760.55 as the unpaid principal balance as of January 31, 2010;
- (b) \$130.90 as the unpaid interest on the principal balance at 3.0% per annum through January 31, 2010; and
- (c) interest on said principal balance from February 1, 2009, at 3.0% per annum until paid.

(Sec'y Stat., ¶ 6, Ex. B, Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated December 7, 2009 was sent to Petitioner. (Sec'y Stat., ¶ 6, Ex. B, 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 but failed to enter into such an agreement. (Sec'y Stat., ¶ 7, Ex. B, Dillon Decl., ¶ 6.) A Wage Garnishment Order was issued to Petitioner's employer on January 7, 2010. (Sec'y Stat., ¶ 9, Exh. 2; Dillon Decl., ¶ 8, Exh. A.) The Secretary's proposed repayment schedule is \$55.36 per week or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 9, Ex. B, Dillon Decl., ¶ 8.)

Discussion

Petitioner claims he does not owe the alleged debt because the debt does not exist. Petitioner contends "I have not utilized any family housing. I would like a copy of any agreements signed so that I may examine them." Need to have original documents. Thank you." (Petitioner's Hearing Request, filed January 29, 2010.) 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 schedule would cause her financial hardship.

Although Petitioner claims that the debt does not exist, he has failed to file any documentary evidence in support of his position. In the Notice of Docketing, Order, and Stay of Referral issued to Petitioner on February 17, 2010, Petitioner was informed that he must request copies of such records related to the debt by forwarding a request to:

Kim McManus, U.S. Department of Housing and Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY 12203. (Notice of Docketing, Order, and Stay of Referral, filed February 17, 2010).

Furthermore, Petitioner was twice ordered thereafter, on March 5, 2010 and April 4, 2010, to file documentary evidence which will prove that the alleged debt is either unenforceable or not past due. (Order, dated March 5, 2010; Order to Show Cause, dated April 14, 2010.) Petitioner failed to comply with both orders.

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 to support Petitioner’s claim challenging the existence of the alleged debt, this Office finds Petitioner’s claim must fail for lack of proof.

As a final point, Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*. (emphasis added).

Accordingly, because Petitioner has also failed to comply with any of the Orders issued by this Office, I find that Petitioner’s non-compliance to the Orders issued provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding exists and is enforceable in the amount alleged and substantiated 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 \$55.36 weekly, or 15% of Petitioner’s disposable income.


Vanessa L. Hall
Administrative Judge

July 28, 2010