



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

In the Matter of:

Adam Ludvigson,
Petitioner

HUDOA No. 10-H-CH-AWG92
Claim No. 721006178

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Pro se

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For the Secretary

DECISION AND ORDER

On May 21, 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 June 4, 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 June 4, 2010.)

Background

On December 28, 2004, Petitioner and Kelli Michele Ludvigson executed and delivered to the Secretary a Subordinate Note (“Note”) in the amount of \$5,389.19, in exchange, the Secretary paid the arrearages on Petitioner’s primary FHA-insured mortgage and Petitioner avoided foreclosure on his home. (Secretary’s Statement (“Sec’y Stat.”), filed July 16, 2010, ¶ 2, Ex. A.) Petitioner also executed a Subordinate Mortgage, in which the Secretary paid this partial claim. (Sec’y Stat., ¶ 2, Ex. B.) The amount to be repaid under the Subordinate Note is \$5,389.19. (Sec’y Stat., ¶3, Exhibit A, ¶4.) The Subordinate Note also states that “when the Note becomes due and payable, payment shall be made at the U.S. Department of Housing and Urban Development.” (Id.)

On or about December 30, 2008, 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, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD (“Dillon Decl.”), dated June 25, 2010, ¶ 4.) Therefore, pursuant to the terms and conditions of the Note, payment is due in full for the partial claims note because the amounts due under the primary note have been paid in full. (Sec’y Stat., ¶ 4, Ex. C, Dillon Decl., ¶ 4.) The Secretary has attempted to collect from Petitioner, but Petitioner remains delinquent. (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) \$4,662.00 as the unpaid principal balance as of May 31, 2010;
- (b) \$11.66 as the unpaid interest on the principal balance at 3% per annum through May 31, 2010; and
- (c) interest on said principal balance from June 1, 2010, at 3% per annum until paid.

(Sec’y Stat., ¶ 7, Ex. C, Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated April 9, 2010 was sent to Petitioner. (Sec’y Stat., ¶ 6, Ex. C, 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 under terms agreeable to HUD. (Sec’y Stat., ¶ 6, Ex. C, Dillon Decl., ¶ 7.) As of April 9, 2010, Petitioner had not entered into a written repayment agreement and also had not provided a pay stub. (Sec’y Stat., ¶ 6, Ex. C, Dillon Decl., ¶ 7.) The Secretary now proposes “a 15% repayment schedule of \$130.00 per month, which will liquidate the debt in approximately three years as recommend [sic] by the Federal Claims Collection Standards.” (Sec’y Stat., ¶ 8, Ex. C, Dillon 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 schedule would cause him financial hardship. Petitioner states that he did not owe the alleged debt because it did not exist, and claims "Don't know what this is for." (Petitioner's Request for Hearing, dated June 2, 2010). Petitioner failed, however, to provide the necessary documentation in support of his claim.

The Secretary argues however that the Petitioner's debt became due when the first mortgage was paid in full. (Sec'y Stat., ¶ 4.) Further the Secretary states that "Consistent with the terms and conditions of the Subordinate Note, the payment for the subject debt is due in full." (Id.) As support, the Secretary submitted a copy of the Subordinate Note that bore Petitioner's signature and showed that Petitioner accepted and agreed to the terms and covenants of the Subordinate Note. (Sec'y Stat., Attach Note, p.2; Dillon Decl., ¶ 4.)

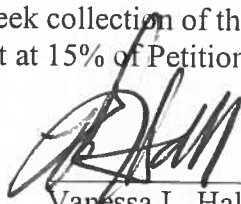
While the Petitioner was ordered on three occasions to file documentary evidence that would prove that the alleged debt was either unenforceable or not past due, he failed to comply with any of the Orders issued by this Office, and as a result, the Secretary's position remains unrefuted. (Notice of Docketing, dated June 4, 2010, Order, dated July 20, 2010, and Order to Show Cause, dated August 24, 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, 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 15, 2010