



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

In the Matter of:

George W. Speller,
Petitioner

HUDOA No. 10-H-NY-AWG124
Claim No. 52-0883319WR

George W. Speller
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Pro se

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For the Secretary

DECISION AND ORDER

On September 10, 2010, Petitioner filed a request for 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 September 16, 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 September 16, 2010.)

Background

Petitioner executed and delivered to Calvary Mobile Homes Inc., A Retail Installment Contract (“Note”) in the amount of \$27,890.00, which 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 December 7, 2010, ¶ 2, Ex. A.) Contemporaneously, on February 19, 1993, the Note was assigned by Calvary Mobile Homes Inc. to Logan-Laws Financial Corporation. (Id.) Logan-Laws Financial Corporation subsequently went out of business, and the Government National Mortgage Association (“GNMA”) took over their loans. As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec’y Stat., ¶¶ 4-5; Declaration of Christopher C. Haspel, (“Haspel Decl.”), Director, Mortgage-Backed Securities Monitoring Division of GNMA within HUD, dated December 6, 2010, ¶¶ 4-5.)

HUD has made efforts to collect on the Note from Petitioner. Petitioner is in default and is indebted to HUD in the following amounts:

- (a) \$23,842.48 as the unpaid principal balance as of October 31, 2010;
- (b) \$13,014.19 as the unpaid interest on the principal balance at 13% per annum through June 24, 2004; and
- (c) interest on said principal balance from June 25, 2004 until paid.

(Sec’y Stat., ¶ 6, Haspel Decl., ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated November 5, 2009 was sent to Petitioner. (Haspel Decl., ¶ 7.) 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, Haspel Decl., ¶ 7.) As a result, the Secretary proposes a repayment schedule of 7% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 9, Haspel 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 the alleged debt is incorrect or that the terms of the proposed repayment schedule would cause him financial hardship.

Petitioner challenges the amount of debt as claimed by the Secretary. Petitioner claims more specifically that:

You should have Repo the Home, [t]hen sold it, [t]hen the remaining balance I would have to pay. You started

Garnishment [of] my wages without contacting me. The House is about 20 years old, and the amount is not correct.

(Petitioner's Request for Hearing, dated September 10, 2010).

While Petitioner maintains this position, to date, Petitioner has failed to provide the necessary documentation in support of his claim despite being given three opportunities to do so. (Notice of Docketing, dated September 16, 2010; Order, dated December 14, 2010, and Order to Show Cause, dated January 20, 2011.)

The Secretary argues, on the other hand, that Petitioner remains legally obligated to pay the alleged debt. As support, the Secretary submitted a copy of the Note bearing Petitioner's signature, in which Petitioner accepted and agreed to the terms and covenants of the Retail Installment Contract. (Sec'y Stat., Ex. A, Attach. Note, p.1; Haspel Decl., ¶ 3.) Consistent with the terms and conditions of the Note, Petitioner is legally obligated to pay the debt that is the subject of this proceeding. (See Sec'y Stat., Ex. A, Attach. Note, p.2, ¶ 5.) The Secretary also filed documentation that showed that Ginnie Mae was willing to settle this matter with Petitioner in order to pay less than the proposed rate of 15% of Petitioner's wages.

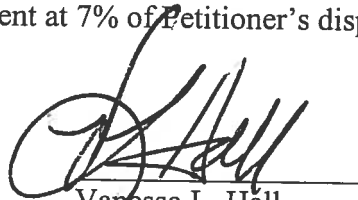
Without evidence from Petitioner to refute or rebut the Secretary's position, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding. This Office has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the 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, 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 7% of Petitioner's disposable income.


Vanessa L. Hall
Administrative Judge

March 31, 2011