



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

In the Matter of:

Alexander A. Corra Jr.,
Petitioner

HUDOA No. 10-H-NY-AWG17
Claim No. 780707219

Alexander A. Corra Jr.
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Pro se

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For the Secretary

DECISION AND ORDER

On November 12, 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 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 November 24, 2009, 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”), dated November 24, 2009.)

Background

On February 28, 2000, Petitioner executed and delivered a Home Improvement Installment Contract and Promissory Note (“Note”) to Liberty Finance Co., in the amount of \$13,100.00, 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 8, 2009, ¶ 2, attach. Ex. A.) Contemporaneously, on February 28, 2000, the Note was assigned by Liberty Finance Co., Inc. to United National Bank. (Sec’y Stat., ¶ 3, attach. Ex. A. at p. 2)

Petitioner failed to make payment on the Note as agreed. Therefore, in accordance with 24 C.F.R. § 201.54, on September 30, 2008, United Bank, Inc., formerly known as United National Bank, assigned the Note to the United States of America. The Secretary is the holder of the Note on behalf of the United States of America. (Sec’y Stat., ¶ 3, attach. Ex. B.)

The Secretary has made efforts to collect this debt from the Petitioner but has been unsuccessful. The Secretary has filed a Statement in support of his position that Petitioner is currently in default on the Note and is indebted to the Secretary in the following amounts:

- (a) \$9,005.98 as the unpaid principal balance as of November 30, 2009;
- (b) \$564.32 as the unpaid penalty balance as of November 30, 2009;
- (c) \$35.33 as the unpaid administrative cost balance as of November 30, 2009;
- (d) \$624.38 as the unpaid interest on the principal balance at 3% per annum through November 30, 2009; and
- (e) Interest on said principal balance from December 1, 2009 at 3% per annum until paid.

(Sec’y Stat., ¶5, Ex. C, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), ¶ 4.)

On or about November 3, 2009, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner pursuant to 31 C.F.R. § 285.11(e). (Sec’y Stat., ¶ 6, Ex. C, Dillon Decl., ¶ 5.)

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, but has not entered into any such agreement. (Sec’y Stat., ¶ 7, Ex. C, Dillon Decl., ¶¶ 6 & 7.)

Based on a review of Petitioner’s pay statement for the period ending November 14, 2009, and after accounting for allowable deductions, the Secretary proposes a weekly repayment

schedule of \$19.03 or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 8, Ex. C, Dillon Decl., ¶ 8.)

Discussion

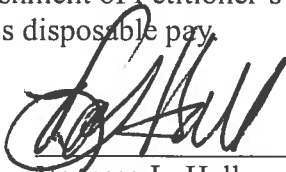
Petitioner challenges the existence of the debt and claims he does not owe the debt. Petitioner states "My ex wife is still living, and has been living in house all this time. Was told bank bought house back. Since the accumulated debt occurred I have not lived at that residence. Since Dec '07 I'm in process of divorce and I was given no info. about property or payments were not being made. The house has been sold. That's all info. I was given." (Petitioner's Request for Hearing, filed November 18, 2009.) Petitioner failed, however, to provide the necessary documentation in support of his claim. 31 C.F.R. § 285.11(f)(8)(ii) provides that Petitioner may 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 evidence in support of his position. (Notice of Docketing, Order, and Stay of Referral, dated November 24, 2009; Order, dated December 18, 2009; Order to Show Cause, dated January 14, 2010.) To date, Petitioner has failed to comply with the directives in each of these Orders.

Without documentary evidence from the Petitioner, this Office is unable to determine whether the alleged debt does not exist, as required under 31 C.F.R. § 285.11(f)(8)(ii). *Mary Baker*, HUDBCA No. 05-D-NY-AWG06 (March 23, 2005); *See also Elizabeth Aragon*, HUDBCA No. 97-C-SE-W231 (October 28, 1997), citing *Nona Mae Hines*, HUDBCA No. 87-1907-G240 (February 4, 1987). Further, 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). Thus, this Office finds that the Secretary has submitted sufficient documentary evidence, unrefuted by Petitioner, to establish the debt as enforceable and past due. Therefore, I find Petitioner's claim fails for lack of proof, and I further find that the debt that is the subject of this proceeding is past due and legally enforceable in the amount alleged by the Secretary.

ORDER

Based on the foregoing, 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 of Petitioner's disposable pay in the amount of \$19.03 per week, or 15% of Petitioner's disposable pay.



Vanessa L. Hall
Administrative Judge

February 18, 2010