



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

In the Matter of:

Jack Sano,

Petitioner

HUDOA No. 10-H-NY-AWG89
Claim No. 78-0096845-0A

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Pro se

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For the Secretary

DECISION AND ORDER

On May 24, 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 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 of Housing and Urban Development ("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 (f)(10), on May 27, 2010, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision, unless a wage garnishment order had previously been issued against Petitioner.

Background

On May 23, 1997, Petitioner executed and delivered to the Secretary a Note to JP Mortgage in the amount of \$25,000.00 ("Note"), 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 That the Petitioner's Debt is Past Due and Legally Enforceable and Secretary's Proposed Repayment Schedule ("Sec'y Stat."), filed June 18, 2010, ¶ 2, Ex. A.) Also, on May 23, 1997 the Note was assigned by JP Mortgage to HOME Inc. (Sec'y Stat., ¶ 3, Ex. A, p. 2.) The Note was subsequently assigned by Homeowners Mortgage & Equity, Inc. d/b/a HOME Inc. to Fannie Mae. (Sec'y Stat., ¶ 4, Ex. B.)

Petitioner failed to make payment on the Note as agreed. In accordance with 24 C.F.R. § 201.54, Federal National Mortgage Association a/k/a Fannie Mae assigned the Note to the United States of America. (Sec'y Stat., ¶ 5, Ex. C.) The Secretary is the holder of the Note on behalf of the United States of America. (Sec'y Stat., ¶ 5, Ex. C.)

The Secretary has made efforts to collect this debt from Petitioner, but Petitioner remains in default. (Sec'y Stat., ¶ 6, Ex. D, Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, HUD Financial Operations Center ("Porter Decl."), ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$24,978.11 as the unpaid principal balance as of June 14, 2010;
- (b) \$5,837.18 as the unpaid interest on the principal balance at 5% per annum through June 14, 2010; and
- (c) interest on said principal balance from June 15, 2010, at 5% per annum until paid.

(*Id.*)

A Notice of Intent to Initiate Wage Garnishment dated March 3, 2009 was sent to Petitioner. (Sec'y Stat., ¶ 7, Ex. D, Porter Decl., ¶ 5.) The Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under the terms agreeable to HUD in accordance with 31 C.F.R. § 285.11(e)(2)(ii), but Petitioner has not entered into a repayment agreement. (Sec'y Stat., ¶ 8, Ex. D, Porter Decl., ¶ 6.)

A Wage Garnishment Order dated April 14, 2010 was issued to Petitioner's employer by HUD, and subsequently, HUD received 25 garnishment payments totaling \$2,596.38. (Sec'y Stat., ¶¶ 9-10, Ex. D, Porter Decl., ¶¶ 7-8.) These payments were

credited towards Petitioner's debt, and are reflected in the outstanding balance now due above. (Sec'y Stat., ¶ 10, Ex. D, Porter Decl., ¶ 8.) Pursuant to 31 C.F.R. § 285.11(i)(A), the Secretary's proposed repayment schedule is \$103.86 per pay period or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 12, Ex. D, Porter Decl., ¶ 10.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship. Petitioner challenges collection of the debt on the grounds that the terms of the proposed repayment schedule would create a financial hardship. Petitioner asserts, "The amount currently taken from my paycheck is causing great financial hardship for my family. I am the sole provider for my family which includes my wife, two daughters and a twelve year old son disabled by muscular dystrophy." (Petitioner's Request for Hearing ("Pet. Hr'g. Req."), dated May 24, 2010).

In support of her argument, Petitioner provides this Office with copies of bills and proof of bill payments, financial statements, and pay stubs. (Petitioner's Documentary Evidence ("Pet'r Evid."), filed July 19, 2010.)

According to Petitioner's three most recent pay statements, representing the pay periods from May 5, 2010 to May 11, 2010, from May 19, 2010 to May 25, 2010 and from May 26, 2010 to June 1, 2010, his average monthly gross pay totals \$1,699.50. (Pet'r Evid.) Petitioner's disposable income is determined "after the deduction of health insurance premiums and any amounts required by law to be withheld . . . [including] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). After deducting allowable deductions, namely \$76.18 for taxes and \$90 for health deductions, Petitioner is left with a monthly disposable income of \$1,367.13.

Petitioner also submitted documentary evidence, along with proofs of payment, of the following essential monthly household expenses: rent, \$1,181.82 average; electric, \$195.83 average; water, \$73.99 average; car, \$150.00 average; and phone \$118.00. (Pet'r Evid.) The phone expense of \$118 is deemed excessive, and, therefore, only a portion of the expense, \$60, will be credited towards Petitioner's essential monthly household expenses. Thus, Petitioner's essential household expenses total \$1,661.64 monthly.

Petitioner's monthly essential living expenses of \$1,661.64 exceed his disposable pay of \$1,367.13 by \$294.51. A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$205.07 per month and would leave Petitioner with a negative balance of (-\$499.58). A 10% garnishment rate would lower Petitioner's garnishment amount to \$136.71 per month and would leave Petitioner with a negative balance of (-\$431.22). A 5% garnishment rate would lower Petitioner's payments to \$68.36 per month and would leave Petitioner with a negative balance of (-\$362.86).

Pursuant to 31 C.F.R. § 285.11(k)(3), this Office has the authority to order garnishment at a lesser rate based upon the record before it, particularly in cases where financial hardship is found. Upon due consideration, this Office finds that the Petitioner has submitted sufficient documentary evidence to substantiate his claim that the administrative wage garnishment of his disposable income, in the amount sought by the Secretary, would cause a financial hardship. While the Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, a garnishment amount at any percentage of Petitioner's disposable income would constitute a financial hardship sufficient enough to forego collection at this time.

ORDER

Based on the foregoing, I conclude that an administrative wage garnishment would create a financial hardship for the Petitioner and, as such, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment shall remain in place indefinitely. Therefore, it is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment because of Petitioner's financial circumstances at this time.

However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment if, in the future, Petitioner's income increases or his expenses for necessities are reduced.



Vanessa L. Hall
Administrative Judge

October 7, 2010