



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

In the Matter of:

**Stephen P. Hornbeck,**  
Petitioner

HUDOA No. 10-M-CH-AWG 04  
Claim No. 780005861-0A

**DECISION AND ORDER**

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" or "Secretary"). 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 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 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 October 8, 2009, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

## Background

On September 15, 1994, Petitioner executed and delivered to American Mortgage Professionals, Inc an installment note ("Note") in the amount of \$15,000 for a home improvement loan that 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 October 22, 2009, ¶ 1.)

The Note was assigned by American Mortgage Professionals, inc. to North Country Bank and later assigned to The First National Bank of Keystone a/k/a First Bank National Association. (Sec'y Stat., ¶ 2.)

Petitioner failed to make payments as agreed in the Note and so First National bank Association then assigned the Note to the United States of America under the regulations governing the Title I Insurance Program. (Sec'y Stat., ¶ 3.) HUD has attempted to collect the amounts due under the Note but Petitioner remains delinquent. (Sec'y Stat., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$8,987.07 as the unpaid principal balance as of September 30, 2009;
- (b) \$3,101.79 as the unpaid interest on the principal balance at 5% per annum through September 30, 2009; and
- (c) interest on said principal balance from October 1, 2009, at 5% per annum until paid.

(Sec'y Stat., ¶ 5; Ex. 2; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated October 16, 2009, ¶ 4.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated September 18, 2009 was sent to Petitioner. (Sec'y Stat., ¶ 6; Ex. 2; Dillon Decl., ¶ 5.)

Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD in accordance with 31 C.F.R. § 285.11(e)(2)(ii). (Sec'y Stat., ¶ 7; Ex. 2; Dillon Decl., ¶ 6.) Petitioner did not enter into a written repayment agreement in response to the September 18, 2009 Notice. (*Id.*)

Based on a review of Petitioner's bi-weekly pay statement for the period ending September 29, 2009, the Secretary, after accounting for allowable deductions, proposes a bi-weekly repayment schedule of \$169.67 or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 10; Ex. 2; Dillon Decl., ¶ 8.)

## Discussion

Petitioner does not contest the existence of the debt claimed by the Secretary. Instead, Petitioner challenges the collection of the debt on two grounds: (1) that he does not owe the full amount of the debt; and (2) that repayment of the debt will cause a financial hardship for him.

(Letter from Petitioner ("Pet'r Let."), filed October 12, 2009; Letter from Petitioner ("Pet'r Let."), filed October 5, 2009.)

First, Petitioner states "there is [sic] two people on this loan but you seem to be holding me liable for full amount." (Pet'r Let., filed October 12, 2009.)

Although Petitioner signed the Note with another party, this Office has previously held that "the Secretary may proceed against any cosigner for the full amount of the debt" because each cosigner is jointly and severally liable for the obligation. Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 at 4. To prove that he is not liable for the debt, Petitioner must file evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release him from his obligation. William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518-H51 (January 27, 1988). Petitioner has filed no evidence to prove that he has been released of his obligation to HUD. Accordingly, I find that Petitioner remains legally obligated on this debt.

Second, Petitioner states "the amount you are currently seeking will put me to [sic] far in debt" and "a payment plan around 200 [dollars] would work." (Pet'r Let., filed October 12, 2009.)

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner "may present evidence that the terms of the proposed repayment schedule...would cause a financial hardship...." In support of Petitioner's argument, Petitioner provided this Office with a copy of a pay stub for the period ending September 20, 2009. (Pet'r Let., filed October 5, 2009.)

In the Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), issued to Petitioner on October 8, 2009, this Office ordered Petitioner to "file, no later than November 9, 2009, documentary evidence which will prove that repayment of this alleged debt would cause a financial hardship to Petitioner." (Notice of Docketing, at 2.) Petitioner failed to respond to the Notice of Docketing. On November 30, 2009, this Office issued another Order to Petitioner directing him to file documentary evidence to support his claim of financial hardship. The Order stated that, "[f]ailure to comply with this Order shall result in a decision based on the documents in the record of this proceeding." (emphasis in original) Petitioner failed to respond to the Order.

Petitioner has failed to submit evidence to support his claim that the terms of the repayment schedule would create a financial hardship for him and has failed to comply with the Order issued by this Office. This Office has held that "[a]ssertions without evidence are not sufficient 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). Since Petitioner does not offer any evidence that would prove that the terms of the repayment schedule would create a financial hardship, I find that Petitioner's argument fails for want of proof.

**ORDER**

For the reasons set forth above, 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 to the extent authorized by law.



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H. Alexander Manuel  
Administrative Judge

February 25, 2010