



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

In the Matter of:

Destry Dokes,

Petitioner

HUDOA No. 10-M-CH-AWG116
Claim No. 780645013

Destry Dokes
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Houston, TX 77083

Pro Se

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DECISION AND ORDER

On August 16, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to 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 are designated to determine whether the Secretary may collect the alleged debts 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). Thereafter, Petitioner 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 August 17, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

Background

On May 20, 1998, Petitioner executed and delivered to Pacific Exchange Mortgage Lender an installment note in the amount of \$20,000.00 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 September 7, 2010, ¶ 2. Ex. A.) Thereafter, Pacific Exchange Mortgage Lender assigned the note to Empire Funding Corporation. (Sec'y Stat., ¶ 2. Ex. A, Note at p. 2.) Empire Funding Corporation assigned the note to Green Tree Servicing, LLC. (Sec'y Sta., ¶ 2. Ex. A1.)

Petitioner failed to make payments as agreed in the note. Consequently, Green Tree Servicing, LL., assigned the note to the United States of America in accordance with 24 C.F.R. Sec. 20154 (2010). The Secretary is the holder of the note on behalf of the United States of America. (Sec'y Stat., ¶ 3 Ex. A1, Assignment at p. 2.)

Petitioner is currently in default on the note. The Secretary has made efforts to collect from the Petitioner other than by administrative wage garnishment but has been unsuccessful. (Sec'y Stat., ¶ 4.) The Secretary has filed a Statement alleging that Petitioner is indebted to HUD in the following amounts:

- (a) \$4,226.55 as the unpaid principal balance as of August 31, 2010;
- (b) \$3.52 as the unpaid interest on the principal balance at 1.0% per annum through August 31, 2010; and
- (c) Interest on said principal balance from September 1, 2010 at 1.0% per annum until paid.

(Sec'y Stat., ¶ 5; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl.," Ex. B.), dated August 31, 2010, ¶ 4.)

HUD sent Petitioner a letter on March 9, 2010, advising him to pay arrearages in the amount of \$3,166.48 to bring the account current. HUD received \$3,166.48 from Petitioner on May 3, 2010, which is reflected in the balance. (Sec'y Stat., ¶ 6, Ex. A2.; Dillon Decl. ¶ 5).

HUD sent Petitioner a Repayment Agreement on May 19, 2010, requesting repayment at the rate of \$150.00 per month. Petitioner did not enter into a Repayment Agreement in response to the May 19, 2010 letter. (Sec'y Stat., ¶ 7, Ex. B1; Dillon Decl. ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") was sent to Petitioner on August 6, 2010 (Sec'y Stat. ¶ 8; Dillon Decl. ¶ 7). Petitioner was again afforded the opportunity to enter into a repayment agreement by letter from Linebarger Googan Blair & Sampson, LLP on behalf of the Secretary. The letter indicated that Petitioner should call HUD to discuss acceptable repayment plans. The letter also indicated that "[t]o prevent wage garnishment, you must pay your debt in full or enter into a repayment plan acceptable to the Federal Agency before September 5, 2010." The Petitioner failed to enter into such an agreement. (Sec'y Stat. ¶ 9; Dillon Decl. ¶ 8.)

The Secretary has attempted to obtain Petitioner's current pay stub. As of September 7, 2010, Petitioner had not provided HUD with a copy of his current pay stub. The Secretary's proposed repayment schedule is \$150.00 per month, which would liquidate the debt in approximately three years as recommended by the Federal Claims Collections Standards, or 15% of Petitioner's disposable pay. (Sec'y Stat. ¶ 10; Dillon Decl. ¶ 9.)

Discussion

In a letter from Petitioner dated August 10, 2010, Petitioner disputes the amount of the debt. Specifically, Petitioner states:

"I recently received a letter from your office regarding a balance due on the [sic] behalf of HUD. As you can see from the letter below, I met HUD requirements to reestablish the account and make monthly payments. Therefore, I am contesting the amount due to Linebarger, Goggan, Blair & Sampson, LLP on the Department of Treasury on the behalf of HUD [sic] based on my current arrangements to make \$150.00 payments. With this in mind, I have attached a HUD letter and my payment documentation for your review and consideration. Please contact me should you have additional questions, thanks." [sic] (Letter from Pet'r., August 10, 2010.)

Petitioner is permitted to present evidence that no debt exists or that the amount is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In the Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), issued to Petitioner on August 17, 2010, this Office ordered Petitioner to "present evidence that the alleged debt is either unenforceable or not past due." The Notice of Docketing also instructed Petitioner to file "documentary evidence which will prove that repayment of the debt would cause a financial hardship to Petitioner". (*Id.*) Petitioner did not respond to the Notice of Docketing. On October 26, 2010, this Office again ordered Petitioner to file documentary evidence on or before November 12, 2010, to prove that the Note was either paid or is unenforceable. (Order, issued October 26, 2010.) The Order specifically stated that, "[i]f Petitioner claims that repayment of the debt would create a financial hardship, Petitioner must file proof consisting of receipts, checks, or other proof of payment of necessary household expenses." (emphasis in original) (*Id.*) The Order also stated: "Failure to comply with this Order shall result in a decision based on the documents in the record of this proceeding." (emphasis in original)

Petitioner has failed to file any evidence that the alleged debt is unenforceable or not past due and has, therefore, failed to comply with the Orders 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." *Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing, *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Since Petitioner does not offer any evidence that would prove that the debt is unenforceable, 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.



H. Alexander Manuel
Administrative Judge

December 23, 2010