



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

In the Matter of:

Daniel Burke, III,

Petitioner.

HUDOA No. 10-M-CH-AWG55
Claim No. 721005797

Daniel Burke, III
44800 Cupa Lane
Temecula, CA 92592-1476

Pro se

Sara J. Mooney, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
For Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

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 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 February 24, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

Background

On August 19, 2000, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") to secure a partial claim paid on his behalf by the Secretary to cure the arrearages on his primary FHA-insured mortgage and avoid the foreclosure of his home. (Secretary's Statement ("Sec'y Stat."), filed March 10, 2010, ¶ 1; Ex. 1, Note.) Pursuant to the terms and conditions of the repayment agreement, the Note becomes due and payable when the borrower pays the primary note in full. (Note, ¶ 3(A)(i).) On or around July 24, 2003, the FHA mortgage insurance on the primary mortgage was terminated as the mortgagee indicated that the mortgage was paid in full. (Sec'y Stat. ¶ 2; Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated March 9, 2010, ¶ 4.)

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is now indebted to HUD. The Secretary alleges that Petitioner is in default and is indebted to HUD in the following amounts:

- (a) \$2,362.98 as the unpaid principal balance as of February 28, 2010,
- (b) \$0.00 as the unpaid interest on the principal balance at 3% per annum through February 28, 2010; and
- (c) interest on said principal balance from March 1, 2010 at 3% per annum until paid.

(Dillon Decl., ¶ 5). A Notice of Intent to Initiate Wage Garnishment ("Notice") was sent to Petitioner on November 18, 2009. (Sec'y Stat. ¶ 5; Dillon Decl. ¶ 6.) Petitioner was afforded the opportunity to enter into a repayment agreement but did not do so. (Sec'y Stat. ¶ 8; Dillon Decl. ¶ 7.)

A Wage Garnishment Order, dated December 21, 2009, was issued to Petitioner's employer by the Department of Treasury. (Sec'y Stat. ¶ 9; Dillon Decl. ¶ 8; Ex. A, Wage Garnishment Order.) There was an error in garnishment calculations in the amount of \$7.70 and Petitioner agreed to waive the error and have the amount applied to his debt. (Sec'y Stat. ¶ 10; Dillon Decl. ¶ 10 and 11.) As of March 9, 2010, the Secretary has collected \$5,517.85 from Petitioner and that amount is included in the calculation above. (Sec'y Stat. ¶ 11.) Based on the pay stubs submitted by Petitioner, the Secretary proposes a repayment plan of 15% of Petitioner's disposable income to satisfy the remaining debt allegedly owed to HUD. (Sec'y Stat. ¶ 10; Dillon Decl. ¶ 12.)

Discussion

Petitioner disputes the existence of this debt. Specifically, Petitioner argues that the debt was paid off and that there was a "clerical mistake with the Riverside County Recorder Office." (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), dated January 19, 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).

This Office has issued two separate Orders requiring Petitioner to file his documentary evidence that the debt in this case is not past-due or legally enforceable. (See, Notice of Docketing, Order, and Stay of Referral, issued February 24, 2010; Order, issued April 1, 2010.) The Order issued on April 1, 2010 specifically 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 comply with both Orders.

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). In order to prove that the debt in this case has been satisfied, Petitioner must submit either a release in writing from the lender discharging Petitioner's obligation, or evidence of valuable consideration accepted by the lender, which would indicate the lender's intent to release Petitioner of his obligation. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Petitioner has not submitted such evidence and, therefore, has failed to comply with the Orders issued by this Office. 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

July 2, 2010