



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

In the Matter of:

Hector Jimenez,
Petitioner

HUDOA No. 10-M-CH-AWG81
Claim No. 771064430-0A

Pro Se

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Selma, TX 78154

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DECISION AND ORDER

On May 5, 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 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 (f)(10), on May 11, 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.

Background

The nature of the debt is a Note signed by Petitioner used to secure financing under the provision of the Title I insurance program. (Secretary's Statement ("Sec'y Stat."), filed May 25, 2010, ¶ 1, Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated May 24, 2010, ¶ 3.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts: \$24,831.75 as the unpaid principal balance as of April 30, 2010; \$10,050.68 as the unpaid interest on the principal balance; and interest on said principal at 5% per annum until paid. (Sec'y Stat., ¶ 2; Dillon Decl., ¶ 4.) The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 4.) In accordance with 31 C.F.R. §285.11(e)(2)(ii), Petitioner was offered the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms, but Petitioner has not entered such an agreement. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 6.) A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated January 11, 2006, was sent to Petitioner. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 5.) The Secretary proposes a repayment schedule of \$1000.00 per month or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 8.)

Discussion

31 U.S.C. §§3716 and 3720A provide federal agencies with administrative wage garnishment as a means of collecting debts owed to the United States Government. The burden of proof is on the debtor to show that the debt claimed by the Secretary is unenforceable and not past-due. 24 C.F.R. §17.152(b). Failure to provide documentary evidence that the alleged debt is unenforceable or not past-due shall result in a dismissal of the debtor's request for a review of the alleged debt. *Id.*

Petitioner does not dispute the existence of the debt to HUD, but rather argues the enforceability of the debt by putting forward two arguments. First, Petitioner argues that the amount of the debt is inaccurate. Petitioner states that after the property in question was sold, there was "an additional 15K [sic]...profit...and [he] did not get credit for an offset..." (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed May 5, 2010.)

Petitioner has not submitted any documentary evidence to support his contention that when the property was sold in foreclosure, there was an overage amount. On June 17, 2010, this Office ordered Petitioner to file "documentary evidence that the alleged debt to HUD...is unenforceable or not past due." (Order, dated June 17, 2010.) This Order also 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) (*Id.*) Petitioner has failed to submit any documentary evidence of this "profit." And even if there was an overage that there was an obligation from the first lien holder to apply any "profit" to the debt owed to HUD. Accordingly, this Office finds that Petitioner remains indebted to HUD in the amount stated above.

Petitioner also submits that, even if the debt is enforceable, he is unable to pay the maximum garnishment amount allowed due to financial hardship. Petitioner is permitted to present evidence that the terms of the repayment schedule would cause a financial hardship to Petitioner. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner has submitted several documents reflecting his income and monthly expenses as evidence that the terms of the repayment schedule would cause financial hardship. (Petitioner's Documentary Evidence ("Pet'r's Doc.") filed July 9, 2010.)

Petitioner provided copies of eleven bi-weekly pay statements for pay periods ending on January 15, 2010, through June 30, 2010. Petitioner's bi-weekly pay statements indicate that his gross pay totaled \$2,291.67. The Secretary is authorized to garnish "up to 15% of the debtor's disposable pay," which 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). Petitioner's allowable deductions are¹: Federal Income Tax, \$156.07; Social Security Tax, \$142.09; Medicare Tax, \$33.23; and Insurance, \$26.16. Subtracting the total of these deductions, \$357.55, from the total gross income equals a net bi-weekly disposable income of \$1,943.12 or \$3,868.24 monthly.

Petitioner, in support of his claim of financial hardship, has submitted records of payment, bills, receipts, bank statements and assertions. Petitioner submitted bills for: mortgage, \$930.87; second mortgage, \$320.63; Home Owner Association dues, \$12.50; and Water & garbage, \$43.77. These amounts total \$1,307.77.

Petitioner also submitted two automobile payments for two vehicles: a Nissan Altima, \$277.41; and a Mitsubishi Rider, \$556.54. Petitioner is a co-borrower on the second vehicle, so is deemed to only be responsible for half the amount, which is \$278.27, for a total monthly auto payment of \$555.68. Insurance for both vehicles is \$178.95 per month and likewise Petitioner is deemed only responsible for half that amount or \$89.48. A yearly vehicle registration bill was also submitted at \$5.10.

Petitioner also submitted proof of payment of a cell phone, and a telephone bill with internet service allocated for a total of \$172.06. This office has deemed that all of these items are not essential and will credit Petitioner \$100.00 for these payments.

Petitioner listed other monthly expenses, for which actual bills were not submitted, such as an energy bill and energy proof of payments, and homeowner's insurance proof of payment. There were also certain food and auto gasoline payments on a bank statement. Without documentary evidence, these listed expenses routinely would not be included. However, in *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28, p. 4 (July 30, 2004), it was determined that credit may be given to certain essential monthly living expenses in instances where the Petitioner's Statement lists monthly expenses but does not provide bills or other documentation.

¹ These amounts were averaged from the individual amounts reflected in the eleven submitted pay stubs.

In the *Loera* case, the “financial information submitted by [the] Petitioner... [was found to be] generally credible, although the averages of monthly living expenses appear to be somewhat overstated.” *Elva and Gilbert Loera* at p.4. Similarly, in this case, this Office will consider allowances to pay for reasonable and necessary living expenses, such as food and utilities. Therefore, this Office will credit reduced amounts towards Petitioner’s monthly living expenses as follows: mortgage escrow account, \$300.00; electricity, \$100.00; homeowners insurance, \$51.25; food, \$300.00; gas and auto expenses, \$150.00; and clothing, \$100.00.

Petitioner also submitted: a Chase monthly bank statement; a home equity line of credit statement; Bank of America and JC Penney credit card proof of payments; and a Star Furniture retail installment contract. However, because Petitioner failed to submit documentary evidence itemizing and identifying the expenditures on the Chase monthly bank statement, Bank of America credit card, JC Penney credit card, and the Western Union receipt, Petitioner has not shown that these expenditures were customary, reasonable, or necessary. Therefore, these bills cannot be used in the calculation of Petitioner’s monthly expenses. The Starr Furniture payment will not be credited towards Petitioner’s monthly expenses because they are not deemed to be essential living expenses.

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. Petitioner’s monthly disposable income of \$3,868.24 less her credited monthly bills and expenses of \$3,059.28 leaves a remaining balance of \$808.96 per month. The Secretary has proposed a repayment schedule of \$1000.00 per month which amounts to approximately 26% of Petitioner’s disposable monthly pay and would leave Petitioner with a negative balance of \$191.04 after paying monthly essential items. Therefore, Petitioner has demonstrated that the Secretary’s proposed repayment schedule would cause her financial hardship.

The maximum garnishment amount authorized by law is 15% of Petitioner’s monthly earnings, or \$580.24. I conclude that Petitioner’s financial circumstances preclude a monthly payment in excess of 10% of his disposable income without significant financial hardship. A 10% garnishment rate would lower Petitioner’s garnishment payments to an average of \$386.82 per month and therefore I deem garnishment at this rate to be acceptable.

Petitioner is advised that this Office is not authorized to consider any settlement offer or any waiver of interest request on behalf of HUD. However, Petitioner may wish to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

ORDER

It is my determination that the amount to be garnished in satisfaction of this debt shall not exceed the sum of 10% of Petitioner’s disposable income per month. The Order imposing the stay of referral of this matter to the U.S. Department of 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 in the amount of 10% of Petitioner's disposable pay. The Secretary shall not be precluded from seeking an increase in the amount to be recovered by administrative wage garnishment if, in the future, Petitioner's income increases or his monthly expenses for necessities are reduced.



H. Alexander Manuel
Administrative Judge

October 20, 2010