



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

In the Matter of:

Pedro Rodriguez,
Petitioner

HUDOA No. 10-M-NY-AWG10
Claim No. 780706112

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For the Secretary

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"). 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 court 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. 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 22, 2009, this court stayed the issuance of a wage withholding order

until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner.

Background

On or about August 19, 2005, Petitioner executed and delivered a Note to Domestic Bank in the amount of \$17,500, 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 ("Sec'y Stat."), filed November 4, 2009, ¶ 2, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated November 2, 2009, ¶ 3.) Petitioner failed to make payments on the Note, and the Note was subsequently assigned to HUD under regulations governing the Title I insurance program. (Sec'y Stat., ¶ 3, Ex. A, Dillon Decl., ¶ 3.) The Secretary is the current holder of the Note. (*Id.*)

HUD has attempted to collect on the Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 4, Dillon Decl., ¶ 4.) Petitioner is indebted to HUD in the following amounts:

- (a) \$9,141.45 as the unpaid principal balance as of October 31, 2009;
- (b) \$182.80 as the unpaid interest on the principal balance at 3% per annum through October 31, 2009 until paid; and
- (c) interest on said principal balance from November 1, 2009 at 3% per annum until paid.

(*Id.*)

On September 18, 2009, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner. (Sec'y Stat., ¶ 5, Dillon Decl., ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec'y Stat., ¶ 6, Dillon Decl., ¶ 6.) As of November 2, 2009, Petitioner had not entered into such an agreement. (Sec'y Stat., ¶ 6, Dillon Decl., ¶ 7.)

The Secretary proposes a garnishment of \$173.41 weekly or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 7, Dillon Decl., ¶ 8.)

Discussion

Petitioner asserts that the debt that is the subject of this proceeding may not be collected by administrative wage garnishment because wage garnishment would cause him a financial hardship. Petitioner states: "15% is too high. 5% is much more reasonable." (Petitioner's Hearing Request, filed October 21, 2009.)

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause financial hardship. On October 22, 2009, this court ordered Petitioner to file documentary evidence proving that all or part of the alleged debt is either unenforceable or not past due. (Notice of Docketing, Order, and

Stay of Referral ("Order"), dated October 22, 2009.) Petitioner was also ordered to file documentary evidence proving that repayment of the debt would cause him financial hardship. (*Id.*) Petitioner failed to respond to the Order.

Additionally, this court ordered the Secretary to file the proposed repayment schedule required under 31 C.F.R. § 285.11(e)(2)(ii), as well as documentary evidence proving that Petitioner's alleged debt to HUD is enforceable and past due. (*Id.*) The Secretary filed the Secretary's Statement, setting forth the documentary evidence in support of the claim against Petitioner for the debt owed to HUD. (Secretary's Statement, filed November 4, 2009.)

On November 30, 2009, this Court again ordered Petitioner to file documentary evidence proving that repayment of his debt to HUD would cause him a financial hardship. (Order, dated November 30, 2009.) The Order further stated that "failure to comply with this Order shall result in a decision based on the documents in the record of this proceeding." (*Id.*) Petitioner failed to respond to this Order as well.

This Office has previously held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or unenforceable." *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996).) Therefore, in the absence of documentary evidence to support Petitioner's assertion that the alleged debt would cause a financial hardship for him, this Office finds that Petitioner's claim fails for lack 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 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

February 25, 2010