



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

In the Matter of:

Russell Honore,

Petitioner

HUDOA No. 10-M-NY-AWG126
Claim No. 721005530

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Pro Se

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DECISION AND ORDER

On September 15, 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" or "the Department"). 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 September 16, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral (“Notice of Docketing”), dated September 16, 2010.)

Background

On September 4, 2002, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note (“Note”) in the amount of \$12,691.90 in exchange for foreclosure relief being granted by the Secretary. (Secretary’s Statement (“Sec’y Stat.”), filed October 5, 2010, ¶ 2, Ex. A.) The Note provides that payment becomes due upon the occurrence of certain events or conditions. (*Id.* at ¶ 3.) One such event is the payment in full of the primary note, which was insured against default by the Secretary. (*Id.*) On or about January 13, 2005, the FHA insurance on Petitioner’s primary note was terminated as the lender informed the Secretary the note was paid in full. (*Id.* at ¶ 4; Ex. B. Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated September 29, 2010, ¶ 4.)

Petitioner failed to make payment on the Note at the place and in the amount specified in the Note, thereby rendering Petitioner’s debt to HUD delinquent. (Sec’y Stat. ¶ 6; Dillon Decl., ¶ 5.) HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec’y Stat. ¶ 7.) HUD alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$7,038.91 as the unpaid principal balance as of August 30, 2010;
- (b) \$205.31 as the unpaid interest on the principal balance at 5% per annum through August 30, 2010; and
- (c) interest on said principal balance from September 1, 2010 at 5% per annum until paid.

(*Id.*; Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated September 3, 2010, was sent to Petitioner. (Sec’y Stat. ¶ 8; Dillon Decl., ¶ 6.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms, but as of September 29, 2010, Petitioner has not entered into a written repayment agreement in response. (Sec’y Stat. ¶ 9; Dillon Decl., ¶ 7.) Despite attempts to obtain Petitioner’s current pay stub, Petitioner has not provided one to HUD. (Sec’y Stat. ¶ 10; Dillon Decl., ¶ 8.) The Secretary’s proposed repayment schedule is \$202.00 per month, which will liquidate the debt in approximately three years, or 15% of Petitioner’s disposable pay. (Sec’y Stat. ¶ 11; Dillon Decl., ¶ 8.)

Discussion

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 or that the amount of the alleged debt is incorrect. Petitioner may also 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 by operation of law. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner disputes the existence of the

debt in this case. Petitioner states, "I do not owe the debt." (Petitioner's Request for a Hearing ("Pet'r Hr'g Req."), filed September 15, 2010.)

On two separate occasions, this Office ordered Petitioner to file documentary evidence to prove that the debt in this case is not enforceable or past due. In the Notice of Docketing, dated September 16, 2010, this Office ordered Petitioner to "file documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due" on or before November 2, 2010. (Notice of Docketing, 2.) On November 10, 2010, this Office again ordered Petitioner to "file documentary evidence to prove that [he] is not indebted to HUD, that the alleged debt in this case is not past due, or that the debt is not legally enforceable against Petitioner" on or before December 1, 2010. (Order, dated November 10, 2010.) The Order stated, "Failure to comply with this Order may result in a decision based upon the documents in the record of this proceeding." (emphasis in original) (*Id.*)


Petitioner has failed to submit 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.

Furthermore, this Office finds a sanction against Petitioner under 24 C.F.R. § 26.4 to be appropriate. 24 C.F.R. § 26.4(a) states that "[t]he hearing officer may sanction a person, including any party or representative for failing to comply with an order...; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing." 24 C.F.R. § 26.4(a) (2010). Therefore, pursuant to 24 C.F.R. § 26.4(c), which sets forth the specific sanctions that may be imposed, including "any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party..." (24 C.F.R. § 26.4(a)), I find that Petitioner has not met his burden of proof, and that the debt in this case is past due and enforceable in the amount alleged by the Secretary.

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

February 2, 2011