



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

In the Matter of:

Ernest Ekwugha

Petitioner

HUDOA No. 10-M-NY-AWG14
Claim No. 721004999

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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 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 November 10, 2009, 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, unless a wage garnishment order had previously been issued against Petitioner.

Background

On February 6, 2002, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$7,959.96, in exchange for foreclosure relief being granted by the Secretary. (Secretary's Statement ("Sec'y Stat."), filed November 24, 2009, ¶ 2.) The Note cites specific events which render the debt due and payable, one of which is the payment in full of the primary note, which was insured against default by the Secretary. (Sec'y Stat., ¶ 3; Note, Ex. A, ¶ 4(A)(k).) On or about September 29, 2004, the FHA insurance on Petitioner's primary note was terminated when the lender informed the Secretary that the Note was paid in full. (Sec'y Stat. ¶ 4; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 4.) Petitioner has failed to make payment to HUD. (Sec'y Stat., ¶¶ 4-7; Dillon Decl., ¶ 5.) The Secretary has made efforts to collect the debt from Petitioner, but has been unsuccessful. (Sec'y Stat. 7; Dillon Decl., ¶ 5.)

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

- (a) \$3,931.56 as the unpaid principal balance as of October 31, 2009;
- (b) \$0.00 as the unpaid interest on the principal balance at 4.0% per annum through October 31, 2009; and
- (c) interest on the principal balance from November 1, 2009, at 4.0% per annum until paid.

(Sec'y Stat., ¶ 7; Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated April 8, 2009, was mailed 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 terms acceptable to HUD. Petitioner failed to enter into a written repayment agreement. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 7.) As a result, a Wage Garnishment Order, dated May 8, 2009, was issued to Petitioner's employer by the U.S. Department of the Treasury. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 8.) Based on the issuance of the Wage Garnishment Order, HUD has received garnishment payments totaling \$1,506.73, which have been credited to the outstanding debt balance. (Sec'y Stat., ¶ 11; Dillon Decl., ¶ 9.) The Secretary now proposes an administrative wage garnishment in the amount of 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 12; Dillon Decl., ¶ 10.)

Discussion

On November 9, 2009, Petitioner requested a hearing concerning a proposed administrative wage garnishment related to a debt owed to HUD, but failed to state his claim(s)

or provide any written evidence to support his Hearing Request. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed November 9, 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 November 10, 2009, this Court ordered Petitioner to file documentary evidence to prove that all or part of the alleged debt to HUD in this case is either unenforceable or not past due. (Notice of Docketing, Order, and Stay of Referral, dated November 10, 2009.) Petitioner was also ordered to file documentary evidence proving that repayment of the debt would cause him financial hardship. (*Id.*) Petitioner failed to comply with this Order.

Additionally, this Court ordered the Secretary to file the proposed repayment schedule required under 31 C.F.R. § 285.11(3)(2)(ii), as well as documentary evidence proving that Petitioner's alleged debt to HUD is enforceable and past due. (*Id.*) On November 24, 2009, 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. (Sec'y Stat.)

On February 18, 2010, a second Order was issued ordering the same information sought in the Notice of Docketing, Order, and Stay of Referral. (Order, dated February 18, 2010). This Order 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 comply with this Order as well.

To date, Petitioner has failed to comply with all of the Orders issued by this Office to provide evidence that would prove that the subject debt is unenforceable or not past due, or provide evidence to support any claim that repayment of the debt would create a financial hardship for him. Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing office, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party* (emphasis added).

Without any documentary evidence demonstrating that the alleged debt in this case is unenforceable or not past due, or that repayment of the debt would create a financial hardship, this Office finds that any claims that Petitioner may have, if any, fail for lack of proof. Furthermore, Petitioner's non-compliance with the Orders issued by this Office also supports finding against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations. (*Id.*)

ORDER

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.

A handwritten signature in black ink, appearing to read "H. Alexander Manuel", written over a horizontal line.

H. Alexander Manuel
Administrative Judge

March 25, 2010