



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

In the Matter of:

Charles R. Horter

Petitioner

HUDOA No. 10-M-NY-AWG16
Claim No. 780705023

Charles R. Horter
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For Petitioner

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For the Secretary

DECISION AND ORDER

On November 18, 2009, 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 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 November 19, 2009, 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, dated November 19, 2009.)

Background

On September 3, 2005, Petitioner executed and delivered a Note to Domestic Bank ("Note") in the amount of \$25,000.00, 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 December 8, 2009, ¶ 2; Ex. A, Note.) Petitioner failed to make payments as agreed in the Note. (Sec'y Stat., ¶ 3.) Consequently, in accordance with 24 C.F.R. § 201.54, on July 22, 2008, Domestic Bank assigned the Note to the United States of America. The Secretary is the holder of the Note on behalf of the United States of America. (Sec'y Stat., ¶ 3; Ex. B Assignment.)

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. As a result Petitioner remains indebted on the Note. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$24,415.58 as the unpaid principal balance as of November 30, 2009;
- (b) \$1,350.87 as the unpaid penalty balance as of November 30, 2009;
- (c) \$35.33 as the unpaid administrative cost balance as of November 30, 2009;
- (d) \$2,103.69 as the unpaid interest on the principal balance at 3% per annum through November 30, 2009; and
- (e) interest on said principal balance from December 1, 2009 at 3% per annum until paid.

(Sec'y Stat., ¶ 4; Ex. C, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of the United States Department of Housing and Urban Development ("Dillon Decl."), dated December 4, 2009, ¶4.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated November 3, 2009 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 with HUD under mutually agreeable terms. As of December 4, 2009, Petitioner has not entered into a written repayment agreement in response to the Notice. (Sec'y Stat., ¶ 6; Dillon Decl., ¶¶ 6-7.)

Based on a review of Petitioner's bi-weekly pay statement for the period ending September 12, 2009, the Secretary, after accounting for allowable deductions, proposes a bi-weekly repayment schedule of \$147.00 of Petitioner's disposable pay. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 8.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720D, provides federal agencies with the remedy of administrative wage garnishment of federal payments for the collection of debts owed to the United States Government.

Petitioner does not challenge his liability for the debt to HUD. Instead, he challenged enforceability of the debt at this time on the grounds that repayment of the debt would cause a financial hardship for him. (Petitioner's Hearing Request ("Pet'r Hearing Req."), filed November 18, 2009). Petitioner states: "I can't pay \$492.00 month as requested. Financial hardship, 1 income, child support & college court ordered via wage execution leaves me at nothing." (Pet'r Hearing Req.) Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that the terms of the Secretary's proposed repayment schedule...would cause a financial hardship. In support of Petitioner's argument, Petitioner provided this Office with a summary of his monthly expenses, a Court Order explaining his child support obligations, two pay statements and monthly bills. (Petitioner's December Documents ("Pet'r Dec. Docs."), dated December 11, 2009.)

Petitioner provided a copy of his pay statements for the bi-weekly periods ending August 29, 2009 and September 12, 2009. (Pet'r Dec. Docs.) Based on these statements, Petitioner's average bi-weekly gross pay is \$3,591.16. After subtracting 30% of this amount for allowable deductions, Petitioner's net bi-weekly pay comes to \$2513.81. Petitioner's pay statement also shows a Child Support deduction of \$520.00, resulting in a bi-weekly pay of 1993.81.

Petitioner submitted a Court Order indicating monthly amounts owing for college tuition and book for daughters, \$611.00; reimbursement of previous college semesters for both daughters, \$594.54; reimbursement of daughter's orthodontics and optical expenses, \$114.33. *Charles Horter v. Lori Nielsen*, Docket No. FM-12-31492-93 J, Superior Court of New Jersey, (December 2, 2009). In addition, Petitioner submitted bills for IRS tax debt, \$368.25; home loan, \$2,272.99; and NCO Financial Systems, \$ 1094.09, resulting in total essential household expenses of \$5052.20 monthly. (Pet'r Dec. Docs.)

Petitioner will not be credited for: attorney's cost, pending civil litigation or cost of vehicle repossession.

Petitioner's monthly disposable pay of \$ \$3987.62, less his share of essential expenses to cover basic expenses of \$5052.20, leaves Petitioner with a remaining balance of (-\$1064.58). A garnishment of \$147.00 per month would leave Petitioner with a balance of (-\$1211.58).

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 in cases where financial hardship is found. While the Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, this Office finds that Petitioner has submitted sufficient documentary evidence to substantiate his claim of significant financial hardship.

I find that the Secretary has established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. However, a garnishment of any amount of Petitioner's disposable income, would, create a financial hardship for Petitioner at this time/

ORDER

Based on the foregoing, I conclude that an administrative wage garnishment shall not be imposed against Petitioner at this time. The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment shall remain in place, indefinitely. It is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment. However, the Secretary is free to seek imposition of an administrative wage garnishment at such time of Petitioner's financial circumstances warrant and upon reconsideration of this Office.

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

H. Alexander Manuel
Administrative Judge

February 4, 2010