



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

In the Matter of:

**Christopher Burris**

Petitioner.

HUDOA No. 10-M-NY-AWG33  
Claim No. 721006072

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*Pro Se*

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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. 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 January 20, 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, unless a wage garnishment order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated January 20, 2010.)

### **Background**

On or about July 10, 2007, Petitioner executed and delivered to the Secretary a Subordinate Note (“Note”) in the amount of \$5,405.72 in exchange for foreclosure relief being granted by the Secretary. (Secretary’s Statement (“Sec’y Stat.”), ¶ 2, filed February 2, 2010; Ex. A.) The Note provides that the loan becomes due upon the occurrence of certain events or conditions. (*Id.* at ¶ 3; Ex. A.) One such condition is when the borrower pays the primary note in full. (*Id.*) On or about January 20, 2009, the FHA insurance on the primary note was terminated, as the mortgage was paid in full, thus making the Note due immediately. (*Id.* at ¶ 4; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated January 29, 2010, ¶ 4.)

Petitioner is currently in default on the Note. HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec’y Stat., ¶ 6; Dillon Decl. ¶ 5.) Petitioner is alleged to be indebted to the Secretary in the following amounts:

- (a) \$5,405.72 as the unpaid principal balance as of December 31, 2009;
- (b) \$94.57 as the unpaid interest on the principal balance at 3% per annum through December 31, 2009; and
- (c) interest on said principal balance from January 1, 2010 at 3% per annum until paid.

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

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated December 10, 2009 was sent to the 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. (Sec’y Stat., ¶ 9; Dillon Decl., ¶ 7.) Petitioner has not entered into a written repayment agreement. (Sec’y Stat., ¶ 9; Dillon Decl., ¶ 7.) The Secretary’s proposed repayment schedule is \$153.00 monthly, which will liquidate the debt in approximately three years, or 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 15; Dillon Decl., ¶ 8.) Despite numerous attempts to obtain Petitioner’s current pay statement, he has not provided one to HUD. (Sec’y Stat., ¶ 14; Dillon Decl., ¶ 8.)

### **Discussion**

31 U.S.C. § 3711 provides federal agencies with the authority to collect debts owed to the United States Government. The burden of proof is on the debtor to file documentary evidence 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 such documentary evidence within 65 days of the date of HUD's Notice of Intent shall result in a dismissal of the debtor's request for a review of the alleged debt. *Id.*

Petitioner claims that the alleged debt to HUD is unenforceable because he paid the debt when he sold his home on January 9, 2009: "All matters were resolved before we sold property on January 9, 2009." (Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed January 14, 2010.) Petitioner, however, has not submitted any evidence in support of his contention that he paid the debt.

In response, the Secretary argues that "the Settlement Statement produced by Petitioner does not show any disbursements made to HUD from the sale proceeds." (Sec'y Stat., ¶ 11.) Furthermore, the Secretary argues, "If it is Petitioner's contention that he paid HUD's debt to Countrywide, neither the Subordinate Note nor HUD authorized Countrywide to receive payments on HUD's behalf. Moreover, Petitioner has produced no evidence to show that HUD directed him to make payment to Countrywide." (*Id.*, at ¶ 12, Ex. A, ¶ 4(B).) "More importantly," the Secretary continues, "Petitioner has produced no evidence to show that he actually paid HUD's debt to Countrywide, and HUD has received no payments from Countrywide on Petitioner's behalf." (*Id.*, at ¶ 13; Dillon Decl., ¶ 9.) Petitioner has submitted no evidence to refute the Secretary's assertion that the debt under the Note has not been paid.

Petitioner was specifically ordered to submit documentary evidence to prove that the alleged debt to HUD in this case is unenforceable or not past due on two occasions: first in the Notice of Docketing and, subsequently, in Order dated February 18, 2010. The February 18<sup>th</sup> Order also stated: "Failure to comply with this Order shall result in a decision based on the documents in the record of this proceeding (emphasis in original)." Petitioner has not responded to any of these orders and has failed to provide documentary evidence to support his claim that HUD was paid the funds disbursed on Petitioner's settlement statement. Petitioner has provided no evidence that the claim in the amount of \$5,405.72 was paid.

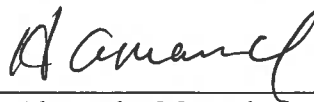
Petitioner has not proved that the debt to HUD is past due or unenforceable. Therefore, this Court finds that the claim that is the subject of this proceeding is legally enforceable against Petitioner in the amount alleged by the Secretary.

### **ORDER**

For the reasons set forth above, this Court finds the debt that is the subject of this proceeding to be past-due and enforceable in the amount alleged by the Secretary.

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

July 14, 2010