



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

In the Matter of:

Joseph Rockwell,

Petitioner.

HUDOA No: 11-H-CH-AWG03
HUD Claim No: 780677735

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Bettendorf, IA 52722

Pro se

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For the Secretary

DECISION AND ORDER

On October 4, 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"). 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 October 5, 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 October 5, 2010.)

Background

On March 9, 2003, Petitioner executed an Illinois Home Improvement Retail Installment Contract ("Note") under provisions of the Title I Insurance Program. (Secretary's Statement "Sec'y Stat.," filed October 22, 2010, ¶ 1; Ex. 1, Note.) The Petitioner defaulted on the Note and it was assigned to the Secretary pursuant to the provisions of the Title I Insurance Program. (Sec'y Stat., ¶ 2; Ex. 3, Assignment; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated October 21, 2010, ¶ 3; Ex. 2.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 4.) Petitioner is allegedly indebted to HUD on the Note in the following amounts:

- (a) \$9,632.39 as the unpaid principal balance as of September 30, 2010;
- (b) \$579.87 as the unpaid penalties as of September 30, 2010;
- (c) \$141.33 as the unpaid administrative cost as of September 30, 2010;
- (d) \$80.30 as the unpaid interest on the principal balance at 2% per annum through September 30, 2010; and
- (e) interest on said principal balance from October 1, 2010, at 2% per annum until paid.

(Sec'y Stat., ¶ 4; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated September 15, 2010 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, but Petitioner declined the opportunity to enter into a voluntary repayment plan. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 6.) Several attempts were made by the Secretary to obtain Petitioner's current pay stub. (Sec'y Stat., ¶ 12; Dillon Decl., ¶ 11.) As of the date of this Declaration, Petitioner has not provided HUD with his current pay stub. (Sec'y Stat., ¶ 12; Dillon Decl., ¶ 11.) The Secretary's proposed repayment schedule is \$289.93 per month or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 12; Dillon Decl., ¶ 11.)

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 and undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. 31 C.F.R. § 285.11(f)(8)(ii).

Petitioner challenges collection of the debt on the grounds that: (1) the debt has been paid in full; (2) he was unable to obtain accurate information about the debt from HUD; (3) he has not been employed by his current employer for less than twelve months; and (4) his wages were already being garnished for child support. (Petitioner's Hearing Request ("Pet'r's Hr'g Req.") filed October 4, 2010.)

First, Petitioner claims that "according to [his] calculations and financial proof this debt should be paid in full." (Pet'r's Hr'g Req.) He contends that garnishment of a total of \$12,881.55 of his wages from 2007 to 2009, garnishment of his ex-wife's wages, offsets of his federal income tax refunds from 2006 to 2009, and \$40,500 in proceeds from the foreclosure and sale of the property in question should have been applied to the debt and were sufficient to pay it in full. (Pet'r's Hr'g Req.) In support of this claim, Petitioner provides copies of payroll data from his former employer showing the Treasury Department had garnished \$4,786.95 in 2007, \$7,189.30 in 2008, and \$905.30 in 2009 for a total of \$12,881.55. (*Id.*) Petitioner provides no documentary evidence of garnishment of his ex-wife's wages, offset of his federal income tax returns, or application of the foreclosure proceeds to the debt.

The Secretary claims that since HUD was assigned the debt, a total of \$25,225.04 has been applied to the debt, including seventy-five payments totaling \$14,750.50 received from the Department of Treasury's Financial Management Service and four Treasury Offset Program payments totaling \$10,654.54. (Dillon Decl., ¶ 7; Ex. B.) However, the Secretary alleges that these payments were not sufficient to pay off the entire debt and a total of \$10,433.89 remained to be paid as of September 30, 2010. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 4.)

As support, the Secretary also submits as credible evidence a copy of the Title I Defaulted Loan Case Reconstruction Report dated October 14, 2010 that further substantiates and accounts for the 75 payments Petitioner made towards the remaining balance of the subject debt. (Dillon Decl., ¶ 7, Ex. B.) Indeed, entries on HUD's Title I Defaulted Loans Case Reconstruction Report for Petitioner's loan corresponds to the \$14,570.50 received from the Department of Treasury's Financial Management Service. The amounts already collected through wage garnishment and offsets of federal payments due to Petitioner have already been credited towards the balance of Petitioner's alleged debt. HUD states that "[w]hile foreclosure served to extinguish the mortgage that secured the HUD insured property improvement loan, it did not cancel Petitioner's liability to HUD based upon the Note." (Dillon Decl., ¶ 9.) Based upon the evidence presented in the record, the Secretary has met his burden to prove the amount and existence of the debt.

While Petitioner has been ordered on three occasions to provide documentary evidence in support of his allegations, Petitioner has failed to provide sufficient documentation to substantiate that the debt has been paid in full. (Notice of Docketing, dated October 5, 2010; Order, dated October 29, 2010; and Order to Show Cause, dated December 29, 2010.) Therefore, without sufficient evidence from Petitioner to refute or rebut the amount claimed by the Secretary, I find the amount of the debt, as alleged by the Secretary, is accurate and credible.

Second, Petitioner claims that he has "been given the run around and denied access" to information and documents regarding the debt. Debtors have the right to "inspect and copy

agency records related to the debt.” 31 C.F.R. § 285.11(e)(2)(i). On October 5, 2010, this Office issued to Petitioner a Notice of Docketing in which Petitioner was informed that he must request copies of documents relating to the alleged debt from:

Kim McManus
U.S. Department of Housing and Urban Development
Financial Operations Center
52 Corporate Circle
Albany, NY 12203

In response Petitioner was provided with “the agency records related to the debt by sending Petitioner a copy of his loan file on October 21, 2010.” (Dillon Decl., ¶ 10; Ex. C.) Petitioner was again informed to request copies of documents relating to the alleged debt from the Financial Operations Center, to the attention of Kim McManus. (Order, dated October 29, 2010.) Petitioner thereafter did not indicate whether he was still in need of the information previously requested. Therefore, Petitioner’s claim that he was never given access to information related to the subject debt is without merit.

Third, Petitioner claims that the debt cannot be collected by wage garnishment at this time because he has “only been in [his] current job for less than 12 months.” (Pet’r’s Hr’g Req.) HUD “may not garnish wages from a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months.” 31 C.F.R. § 285.11(j). However, “[t]he debtor has the burden of informing the agency of the circumstances surrounding an involuntary separation from employment.” *Id.* In this case, an examination of the record shows that Petitioner not only has not raised the issue of any uncertainty of his current employment status, but he also has not provided any documentary evidence showing he was previously involuntarily separated from employment at any point. As such, Petitioner’s claim in this regard is without merit.

Fourth, Petitioner claims that the debt cannot be collected at this time because he “already [has] 28% of [his] paycheck garnished to satisfy [his] child support obligation.” (Pet’r’s Hr’g Req.) A debtor may provide evidence that a wage garnishment would cause financial hardship. 31 C.F.R. § 285.11(f)(8)(ii). Further, wage garnishments for family support have priority over a wage garnishment for repayment of this debt. 31 C.F.R. § 285.11(i)(3)(i). However, Petitioner has provided no documentary evidence of any wage garnishment for child support and he has also provided no documentary evidence of his current financial standing. This Office has maintained consistently that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996.) Therefore, I find that Petitioner’s claim that the proposed administrative wage garnishment amount would cause financial hardship fails for lack of proof.

ORDER

For the reasons set forth above, this Office 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 in the amount of 15% of Petitioner's bi-weekly disposable pay until fully paid.

A handwritten signature in black ink, appearing to read 'V. Hall', is written over a horizontal line.

Vanessa L. Hall
Administrative Judge

February 15, 2011