



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

In the Matter of:

Ralph Costilla,

Petitioner

HUDOA No. 11-H-CH-AWG105
Claim No. 780599731

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Pro se

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For the Secretary

DECISION AND ORDER

On June 14, 2011, 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 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. 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 June 16, 2011, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated June 16, 2011.)

Background

On or about August 11, 1999, the Petitioner executed and delivered to Creekside Homes a Manufactured Home Retail Installment Contract Security Agreement Disclosure Statements and Waiver of Trial by Jury and Agreement to Arbitration ("Note") in the amount of \$42,625.00. (Secretary's Statement ("Sec'y Stat."), filed July 11, 2011, ¶ 2, Ex. A.) The Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703.

A Default Judgment was entered against Petitioner and in favor of CU Factory Built Lending, LP d/b/a SACU Mortgage Services ("CU Factory Built Lending") on August 4, 2004, in the District Court of Bexar County, Texas. (Sec'y Stat., Ex. C.) CU Factory Built Lending assigned its rights and interests to the Default Judgment to HUD on September 30, 2004. (*Id.*, at p. 4.; Declaration of Brian Dillon, Director, Financial Operations Center in HUD ("Dillon Decl."), dated June 30, 2011, ¶ 3.)

HUD has attempted to collect the debt from Petitioner, but Petitioner remains in default. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$24,846.87 as the unpaid principal balance as of May 30, 2011;
- (b) \$18,211.87 as the unpaid interest on the principal balance at 12.75% per annum through May 30, 2011;
- (c) interest on said principal balance from June 1, 2011, at 12.75% per annum until paid.

(Sec'y Stat., ¶ 7, Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent"), dated May 16, 2011, was sent to Petitioner. (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 under terms agreeable to HUD. Petitioner has not entered into such an agreement. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 6.) A Wage Garnishment Order, dated March 19, 2010, was issued to Petitioner's employer. (Sec'y Stat., ¶; Ex. B, Dillon Decl., ¶ 7.) Petitioner has not provided a pay statement. (Sec'y Stat., ¶ 9; Ex. B, Dillon Decl., ¶ 9.) As a result, the Secretary's proposed repayment schedule is \$950.00 per month or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 9, 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, that the amount of the debt is incorrect, or that the terms of the proposed repayment schedule would cause him financial hardship. Petitioner does not challenge the existence of the debt, but rather asserts that the amount of the debt is incorrect and that the terms of the proposed repayment schedule would create a financial hardship for him.

First, Petitioner contends that the amount of the debt listed on the Notice of Intent — \$32,628.47 — is incorrect. (Petitioner Hearing Request ("Pet'r's Hr'g Req."), filed June 14, 2011.) Although Petitioner has not included any documentary evidence to support this assertion,

the Secretary has agreed that the debt figure identified on the Notice of Intent was incorrectly calculated. (Sec'y Stat., ¶ 12; Dillon Decl., ¶ 5.) The Secretary contends, however, that the debt listed in the Secretary's Statement is accurate, and offers supporting evidence in the form of sworn testimony from Brian Dillon, Director of HUD's Asset Recovery Division and an Audit Reconstruction Report. (Dillon Decl., ¶ 5; Ex. A, Audit Reconstruction Report ("ARR"), created June 30, 2011.) The ARR identifies the principal amount of Petitioner's loan as \$24,846.87 on June 4, 2004, and shows two offset payments totaling \$3,700.13 and a total accumulated interest of \$18,211.87. The principal and interest figures are identical to those quoted in the Secretary's Statement. (See Sec'y Stat., ¶ 7.) To date, Petitioner has not contested HUD's revised calculation, and has produced no documentary evidence that shows that the revised figure is incorrect. I find, therefore, that Petitioner has failed to meet his burden of proof that the amount of the debt is incorrect, and I further find that Petitioner remains legally obligated to pay the alleged debt.

Second, Petitioner asserts that the Secretary's proposed repayment schedule of \$950.00 or 15% of Petitioner's monthly disposable income would create a financial hardship. (Pet'r's Hr'g Req., p. 1.) Disposable income is defined as "that part of the debtor's compensation from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld ... [including] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c).

Petitioner supports his financial hardship claim with documentary evidence that includes a financial statement and proofs of payment for rent and utilities. (Documents from Petitioner ("Pet'r's Docs."), filed August 26, 2011.) Petitioner did not include a pay statement among his documentary evidence. However, the financial statement states that Petitioner earns an average monthly income of \$3,800.00 (*Id.*, at p. 3.) Petitioner's monthly deductions are: federal income tax (\$135.96) and Social Security (\$199.16). Petitioner also categorizes a monthly deduction of \$587.52 as "Other," but does not identify this deduction or explain its purpose. There is no evidence that this deduction is "required by law to be withheld," thus the \$587.52 will be included among Petitioner's disposable income. Petitioner, therefore, has a net monthly disposable income of \$3,464.88. A garnishment of 15% of this income, or \$519.73, would leave Petitioner with \$2,945.15, before deducting essential monthly living expenses.

Petitioner also submitted copies of bills evidencing monthly expenses totaling \$977.35 that includes: rent (\$600.00), garbage/sewage (\$44.00), electricity (\$175.00), and telephone (\$122.00). (Pet'r's Docs., p. 1.) Petitioner also provided evidence of monthly expenses of \$680 for gas heat, \$476 as "Other," and \$400 for food, but has failed to introduce evidence substantiating these figures. (*Id.*) Without documentary evidence, these listed expenses routinely would not be included. However, this Office has determined that credit may be given for certain essential household expenses, such as gas and food, where Petitioner has not provided bills or other documentation, yet the "financial information submitted by Petitioner ... [was found to be] generally credible...." *David Herring*, HUDOA No. 07-H-NY-AWG53 (July 28, 2008) (citing *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004).

Thus, consistent with *Herring* and *Loera*, this Office will credit \$400.00 for food towards Petitioner's essential expenses. Petitioner's expenses of \$476 as "Other," however, will not be

credited towards the monthly expenses because there is no evidence that this payment relates to an essential living expense. Additionally, the evidence produced by Petitioner does not support sufficiently Petitioner's claim of \$680.00 for gas heat. Without evidence to substantiate this cost, this Office will only credit \$300.00 towards Petitioner's estimated cost for gas heat. Monthly payments to Western Finance and the Texas Spine Clinic will not be credited, as these have not been proven by Petitioner to be essential living expenses. After deducting a total of \$1,677.35 for all essential living expenses, Petitioner is left with \$1,267.80 per month.

The Secretary accurately notes that financial adversity does not invalidate a debt nor release a debtor from a legal obligation to repay it. (Sec'y Stat., ¶ 11.) (See *Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986); *Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996); *Charles Lomax*, HUDBCA No. 87-2357-G679 (February 3, 1987). Although this Office has the authority, pursuant to 31 C.F.R. § 285.11(k)(3), to downwardly adjust a wage garnishment to reflect the debtor's financial condition, the Secretary asserts that Petitioner has failed to provide the "particularized" evidence necessary to warrant such an adjustment. (*Id.*)

Upon full consideration of the record, this Court has determined that the evidence provided by Petitioner sufficiently proves the state of Petitioner's financial condition, but Petitioner has failed to meet his burden of proof, by a preponderance of the evidence, that a garnishment of 15% of his disposable income would create a financial hardship for Petitioner. Consequently, I find that Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

ORDER

For the reasons set forth above, I find that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing the stay of referral of this matter to the U.S. Department of 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 monthly disposable income.



Vanessa L. Hall
Administrative Judge

November 17, 2011