



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

In the Matter of:

Donald Wilborn,
Petitioner

HUDOA No. 11-H-CH-AWG43
Claim No. 5448911 SAMCO 9243

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Pro se

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For the Secretary

DECISION AND ORDER

On January 3, 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 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), on January 13, 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 January 13, 2011.)

Background

On October 7, 1992, Petitioner signed and entered into a Manufactured Home Retail Installment Sales Contract and Security Agreement (“Contract”) with A-1 Mobile Homes. (Secretary’s Statement (“Sec’y Stat.”), filed February 7, 2011, ¶ 2, Ex. B.) The Contract was assigned to SAMCO Mortgage Corporation. (*Id.*, Ex. C.) SAMCO was defaulted by the Government National Mortgage Association (“Ginnie Mae”) as an insurer of Mortgage-Backed Securities (“MBS”) due to its failure to comply with Ginnie Mae MBS program requirements. (*Id.* at ¶ 3; Ex. A, Declaration of Christopher C. Haspel, Director, MBS Monitoring Division of the Ginnie Mae within HUD (“Haspel Decl.”), dated February 3, 2011, ¶ 4.) Therefore, all of SAMCO’s rights and interest in Petitioner’s loan were assigned to Ginnie Mae by virtue of the assignment contained in the Guaranty Agreement entered into between SAMCO and Ginnie Mae. (Sec’y Stat., ¶ 3; Haspel Decl., ¶ 4.) As Ginnie Mae (a division of HUD) is the rightful holder of Petitioner’s loan, the Secretary is entitled to pursue repayment from Petitioner.

The Secretary has made efforts to collect from Petitioner, but Petitioner remains delinquent. (Sec’y Stat., ¶ 5, Ex. D; Haspel Decl., ¶ 6.) The Secretary has filed a Statement in support of his position that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$18,410.12 as the unpaid principal balance;
- (b) \$5,332.50 as the unpaid interest on the principal balance at 11.75% per annum through February 2, 2011; and
- (c) interest on the principal balance from February 3, 2011 until paid.

(Sec’y Stat., ¶ 7, Ex. E; Haspel Decl., ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated November 30, 2010 was sent to Petitioner. (Sec’y Stat., ¶ 6; Haspel Decl., ¶ 7.) 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, but has not entered into such an agreement. (Sec’y Stat., ¶ 6; Haspel Decl., ¶ 7.) The Secretary proposes a repayment schedule of 10% of Petitioner’s disposable pay, instead of the Federal Agency allowed amount of 15%. (Sec’y Stat., ¶ 11, Haspel 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 or that the terms of the proposed repayment schedule would cause him financial hardship. Petitioner contends that the

debt is not enforceable against him as a result of a divorce agreement made between Petitioner and his ex-spouse. (Petitioner's Request for a Hearing ("Pet'r Hr'g Req."), dated January 3, 2011.) Petitioner states, "As a result of this [divorce] decree, the debt is solely the responsibility of Mrs. Newton-Rios [ex-spouse]." (*Id.*) As support, Petitioner submitted a copy of the divorce decree and further states, "I am attaching a copy of the divorce decree granting sole ownership of the mentioned property to . . . now Sherrie Newton-Rios [ex-spouse]." (*Id.*, Attach.)

The divorce decree orders Petitioner to execute a "Power of Attorney To Transfer Mobile Home," in order to transfer the title of a mobile home located at 210 East Meadow Lane, Red Oak, Ellis County, Texas 75154 to his ex-wife. (*Id.*, Attach.) The divorce decree further orders that "[a]ll debts, encumbrances, ad valorem taxes, liens, assessments or other charges due or to become due on or secured by the . . . mobile home" are to be paid by his ex-wife, and that she had "right, title and interest in [the] mobile home . . . , subject to all debt secured by said mobile home." (*Id.*, Attach.)

In response, the Secretary asserts that "the divorce agreement determined Petitioner's rights and liabilities only as between Petitioner and his former spouse," and "did not release Petitioner from his obligation to HUD as a co-signor of the [C]ontract." (Sec'y. Stat., ¶ 9.) The Secretary further asserts that "[w]here a property settlement or divorce decree purports to release one spouse from a joint obligation, the claims of existing creditors against that spouse are not affected unless creditors were parties to the action," and that "HUD, as a creditor, was not a party to Petitioner's divorce settlement." (*Id.* at ¶ 10.) "Consequently," the Secretary concludes, "Petitioner is liable to HUD for the debt owed." (*Id.*) As support, the Secretary produced a copy of the Contract and the Federal Truth in Lending Disclosure Statement, along with copies of assignments, that each reflected the signatures of Petitioner and his ex-spouse. (Sec'y. Stat., Exh. B, p. 1-2, and Exh. C.)

In this case, the Secretary's "right to collect the alleged debt emanates from the terms of the Contract." *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the full amount of the debt he must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release him from his obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (*citing Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)). Additionally, this Office has previously held that "co-signers of a loan are jointly and severally liable to the obligation, and as a result, the Secretary may proceed against any co-signer for the full amount of the debt." *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004); *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). Petitioner's divorce decree only determines the rights and liabilities between Petitioner and his ex-wife, and HUD was not a party to the divorce action. *Hedieh Rezai* (*citing Kimberly S. King (Theide)*, HUDBCA No. 89-4587-L74 (April 23, 1990)). "Petitioner may have a right of action against her former husband, based on the divorce decree, but the Secretary is not prevented from enforcing the debt against

Petitioner . . .” *Anna L. Kestner*, HUDBCA No. 99-D-NY-Y275 (May 23, 2000) (citing *Joy A. Forbes*, HUDBCA No. 93-C-NY-R906 (Dec. 20, 1993)).

In this case, Petitioner and his former wife both signed the Contract at issue. (See Sec’y. Stat., Ex. B.) They both agreed to the terms in the Contract regarding default that:

DEFAULT. If BUYER defaults in performing any obligation herein, SELLER may, after giving the notice of default and opportunity to cure required by applicable statu[t]es and regulations, accelerate the maturity of the entire unpaid balance of this Contract together with the accrued and unpaid interest and declare the same immediately due and payable.

(Emphasis in original) (Id.)

Thus, consistent with *Hedieh Rezai*, *Mary Jane Lyons Hardy*, and *Anna L. Kestner*, Petitioner and his ex-spouse can be held jointly and severally liable for the debt that is the subject of this proceeding because they agreed to the terms of the contract regarding default and because their divorce decree is only binding between Petitioner and his ex-spouse. HUD was not a party to their divorce action. Furthermore, despite being ordered on three separate occasions to file documentary evidence that would otherwise support of his position, Petitioner also has failed to produce either evidence of a written release from his obligation to pay the alleged debt, or evidence of valuable consideration paid to HUD in satisfaction of the debt, consistent with *Franklin Harper* and *Jo Dean Wilson*. (Notice of Docketing; Order, dated February 11, 2011; Order to Show Cause, dated February 25, 2011.) This Office has previously held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable.” *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, I find that Petitioner’s claim challenging the enforceability of the alleged debt must fail for lack of proof.

Petitioner may seek an enforcement of the divorce decree against his former wife in state or local court to the extent allowed in order to recover monies paid to HUD by Petitioner for the satisfaction of the alleged debt. The alleged debt otherwise remains enforceable against Petitioner by collection through administrative wage garnishment. Therefore, I further find that the Secretary may proceed against any co-signer, including Petitioner, for the full amount of the debt.

As a final point, 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 officer, the hearing officer may enter any appropriate order necessary to the disposition of the

hearing including *a determination against a noncomplying party*. (Emphasis added).

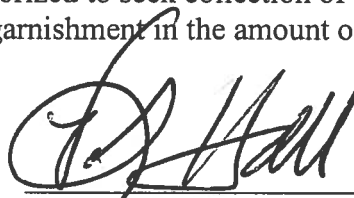
Accordingly, because Petitioner has also failed to comply with any of the Orders issued by this Office, I find that Petitioner's non-compliance to the Orders issued by this Office provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding is 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 10% of Petitioner's disposable pay.

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

Vanessa L. Hall
Administrative Judge

May 26, 2011