



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

In the Matter of:

Artley U. Pullum Sr.,
Petitioner

HUDOA No. 11-H-NY-AWG116
Claim No. 7059272

Artley U. Pullum
301 Lookabill Road
Denton, NC 27239

Pro se

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For the Secretary

DECISION AND ORDER

On July 8, 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. 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 July 14, 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 July 14, 2011.)

Background

On March 22, 2000, Petitioner executed and delivered a Promissory Note ("Note") in the amount of \$65,654.00 to First Beneficial Mortgage Corporation ("First Beneficial"), which was insured against nonpayment by the Secretary pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Secretary's Statement ("Sec'y Stat.") ¶ 2, filed Aug. 12, 2011; Declaration of Paul St. Laurent III, Acting Director, Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association ("Ginnie Mae") within HUD ("Laurent Decl.") ¶ 3, dated Aug. 9, 2011.) First Beneficial was defaulted as an issuer of Mortgage Backed Securities ("MBS") due to its failure to comply with Ginnie Mae's MBS program requirements. (Sec'y Stat. ¶ 3; Laurent Decl. ¶ 4.) Upon default by First Beneficial, all of its rights, title and interest in Petitioner's loan were assigned to Ginnie Mae by virtue of the Guarantee Agreement entered into between First Beneficial and Ginnie Mae. (Sec'y Stat. ¶ 4; Laurent Decl. ¶ 4.) As Ginnie Mae is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (Sec'y Stat. ¶ 5; Laurent Decl. ¶ 5.)

Petitioner is currently in default on the Note. (Sec'y Stat. ¶ 6; Laurent Decl. ¶ 6.) The Secretary has made efforts to collect from Petitioner through means other than administrative wage garnishment, but has been unsuccessful. (Sec'y Stat. ¶ 6; Laurent Decl. ¶ 6.) The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$62,400.14 as the unpaid principal balance;
- (b) \$29,958.14 as the unpaid interest on the principal balance at 9.5% per annum through July 21, 2005;
- (c) interest on said principal balance from July 22, 2005 until paid; and
- (d) \$2,099.26 in administrative costs.

(Sec'y Stat. ¶ 6; Laurent Decl. ¶ 6.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated August 4, 2007, was sent to Petitioner. (Sec'y Stat. ¶ 7; Laurent 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 mutually agreeable terms. (Sec'y Stat. ¶ 8; Laurent Decl. ¶ 7.)

The Secretary's proposed repayment schedule is 10% of Petitioner's disposable pay. (Sec'y Stat. ¶ 12; Laurent Decl. ¶ 9.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), if Petitioner disputes the existence or amount of the debt the Petitioner "must present, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect." Petitioner objects to the administrative wage

garnishment, stating, "This [mobile home] was set on our land and only cost \$68,000[.] Why do I owe \$130,708?" (Pet'r's Hr'g Req., filed July 8, 2011.)

Further, Petitioner stated that the "15% garnishment from [his] wages is a severe financial hardship." (Pet'r's Doc. Evid., filed Oct. 12, 2011.) In response to Petitioner's argument that he does not owe \$130,708.00, the Secretary asserts that Petitioner:

signed a Truth in Lending Disclosure Statement on March 22, 2000 wherein he acknowledged that if he made all payments as scheduled his total payment would amount to \$178,727.51. However, Petitioner has defaulted on the loan resulting in the additional accrual of interest and administrative costs on the unpaid principal balance.

(Sec'y Stat. ¶ 10; Laurent Decl. ¶ 8.)

While the Secretary references a Truth in Lending Disclosure Statement, the Secretary did not file a copy of this document or any other document that supports that Petitioner acknowledged that if he made all scheduled payments, his total payment would amount to \$178,727.51. Nonetheless, the Secretary did provide a copy of the Note in which it states that Petitioner is responsible for *all interest* accrued on the debt at the date of maturity. (emphasis added.) (Sec'y Stat., Ex. A) Such evidence provides sufficient proof that Petitioner is obligated to pay both the principal amount of the debt, as well as interest that has accrued. Should Petitioner wish to obtain further information regarding how his debt was calculated, Petitioner may again request copies of documents relating to his debt by contacting: Debra Mele Cox, U.S. Department of Housing and Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY 12203.

Next, Petitioner claims that this administrative wage garnishment would cause a financial hardship. In support of his financial hardship claim, Petitioner provided this Court with a copy of a paystub, along with proofs of payment of various expenses. (Pet'r's Doc. Evid.) Petitioner's weekly paystub indicates that Petitioner's gross weekly pay is \$615.30, or \$2,461.20 monthly. The Secretary is authorized to garnish up to 15% of the debtor's disposable pay, which is determined "after the deduction of health insurance premiums and any amounts required by law to be withheld. . . . includ[ing] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). After subtracting allowable deductions for federal tax, \$70.04; state tax, \$140.60; FICA, \$97.36; Medicare, \$33.60; accident insurance, \$26.76; medical insurance, \$50.00; and dental insurance, \$4.00, Petitioner is left with a monthly disposable income of \$2,038.84.

The documentary evidence submitted by Petitioner for his essential monthly household expenses are: electric bill, \$180.29; phone, \$35.00; and property tax, \$14.46. (Pet'r's Doc. Evid.) While Petitioner alleged monthly household expenses for cable and internet costs, this Court does not consider such expenses to be essential expenses, and as such, did not credit those costs it towards Petitioner's monthly household expenses. Petitioner also alleges an additional expense for food, \$422.00, but failed to file proof of payment in support of this additional expense. However, this Office has maintained that credit may be given for certain essential

monthly living expenses such as expenses for food, shelter, or utilities, in instances where the listed monthly expenses provide reasonable and necessary living expenses, even though proofs of payment have not been provided. *David Herring*, HUDOA No. 07-H-NY-AWG53, at 4-5 (July 28, 2008); *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28, at 4 (July 30, 2004). Likewise, in this case, the Court will permit allowances for reasonable and necessary living expenses such as food, utilities, and mortgage. Therefore, the monthly amount alleged for food, \$422.00, also will be credited towards Petitioner's monthly household expenses and will result in Petitioner's monthly household expenses totaling \$666.46.

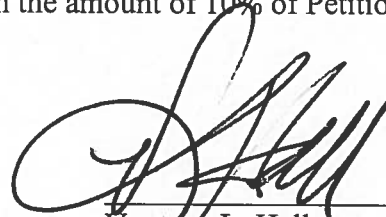
Petitioner's disposable income of \$2,038.84 exceeds his monthly living expenses of \$651.75 by \$1,387.09. A 10% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$203.89, resulting in a positive balance of \$1,183.20, an amount sufficient to cover those non-essential expenses that might remain on a monthly basis for Petitioner. As a result, Petitioner has failed to meet his burden of establishing, by a preponderance of the evidence, that the Secretary's proposed repayment schedule creates a financial hardship for him, and thus 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 which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing stay of referral in 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 refer this matter to the U.S. Department of the Treasury for administrative wage garnishment in the amount of 10% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

January 13, 2012