



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

In the Matter of:

Ernest D. Powell,

Petitioner

HUDOA No. 11-H-NY-AWG124
Claim No. 780158330

DECISION AND ORDER

On August 4, 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 bears the initial burden of proof to show the existence and amount of the alleged 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 or unenforceable. 31 C.F.R. § 285.11(f)(8)(ii).

Pursuant to 31 C.F.R. § 285.11(f)(4), on August 16, 2011, 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 August 16, 2011.)

Background

On November 24, 1997, Petitioner executed and delivered a FHA Title I Property Improvement Loan Retail Installment Contract ("Note"), in the amount of \$8,945.00, to The Siding Factory. (Secretary's Statement ("Sec'y Stat."), ¶ 2, filed September 13, 2011; Ex. A, Note.) The Note was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. On December 10, 1997, the Note was assigned by The Siding Factory to Statewide Mortgage Company, doing business as First Financial Funding, Inc. (Sec'y Stat., ¶ 3.) After default by Petitioner, Norwest Home Improvement Inc., formally Statewide Mortgage Company, assigned the Note to HUD under the regulations governing the Title I Insurance Program. (*Id.*; Ex. C, Declaration of Kathleen Porter, Acting Director, Asset

Recovery Division, Financial Operations Center for HUD, ("Porter Decl."), ¶ 3, dated August 30, 2011.)

HUD's attempts to collect the debt from Petitioner have been unsuccessful. (Sec'y Stat., ¶ 5; Porter Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$8,795.42 as the unpaid principal balance as of July 31, 2011;
- (b) \$547.66 as the unpaid interest on the principal balance at 5% per annum through July 31, 2011; and
- (c) interest on said principal balance from August 1, 2011 at 5% per annum until paid.

(Sec'y Stat., ¶ 5; Porter Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Garnishment Notice"), dated July 18, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 6; Porter 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. To date, Petitioner has not entered into a written repayment agreement in response to the Notice. (Sec'y Stat., ¶ 7; Porter Decl., ¶ 6.)

The Secretary states that HUD has been unable to obtain a copy of Petitioner's pay statement, and so requests a repayment schedule of either \$260.00 per month or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 8; Porter Decl., ¶ 8.) Petitioner's 2010 federal tax return of \$4,090.00 was offset pursuant to the Treasury Offset Program and applied to the subject debt. (Sec'y Stat., ¶ 8; Porter Decl., ¶ 8.)

Discussion

Petitioner must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect or unenforceable. 31 C.F.R. § 285.11(f)(8)(ii).

Petitioner does not deny the existence of the alleged debt but instead challenges the amount of the alleged debt as claimed by the Secretary. Petitioner states that, "[L]ast year's tax's [sic] was taken, so 4,000 should be subtract [sic] from this amount." (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), p. 1, filed August 4, 2011.) Petitioner has failed to present any documentary evidence to substantiate his claim, despite being ordered on three occasions to do so. (Notice of Docketing, Order, and Stay of Referral, dated August 16, 2011; Order, dated October 4, 2011; Order to Show Cause, dated November 16, 2011.)

The Garnishment Notice sent to Petitioner on July 18, 2011 identified the alleged debt amount as \$12,098.36. The Notice suggested that Petitioner "[C]all us at the telephone number listed below to discuss acceptable repayment plans." (See Sec'y Stat.; Porter Decl., ¶ 6; Pet'r's Hr'g Req., p. 2.) There is no record of Petitioner ever entering into a repayment agreement. Instead Petitioner filed an appeal with this Court on August 4, 2011, in which he claimed he was not credited for the offset of his 2010 federal tax refund. (Pet'r's Hr'g Req., p. 1.) The tax

refund amount that was offset resulted from Petitioner's failure to respond to a Notice of Intent to Collect by Treasury Offset initially mailed to him on February 8, 2010. But, the amount referenced by Petitioner in his Hearing Request actually was posted against Petitioner's account on February 4, 2011, in the amount of \$4090.00. (See Porter Decl., ¶ 8.) This amount that was in fact credited was identical to the amount Petitioner claimed was no applied to the alleged debt but should have been applied towards the balance of the alleged debt. (See Pet'r's Hrg. Req.)

Based on the evidence presented, the Court is fully persuaded that Petitioner's offset tax return was properly credited toward the repayment of the debt that is the subject of this proceeding. The offset was, however, insufficient to completely extinguish the debt. As such, the balance claimed by the Secretary remains outstanding. (Sec'y Stat., ¶ 5; Porter Decl., ¶ 4.) Because Petitioner has failed to submit evidence that would otherwise refute the evidence as presented by the Secretary regarding the amount of the remaining balance, Petitioner's claim fails for lack of proof. Therefore, I find that Petitioner remains legally obligated to pay the subject debt in the amount of \$8,795.42, the amount as claimed by the Secretary.

As a final point, Rule 26.4(c) 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, I find that, pursuant to Rule 26.4(c), Petitioner's non-compliance with the Orders issued by this Court also provides a basis for rendering a decision against Petitioner.

ORDER

Based on the foregoing, 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.


Vanessa L. Hall
Administrative Judge

February 14, 2012