



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

In the Matter of:

Keshin Dawkins,
Petitioner

HUDOA No. 11-H-NY-AWG16
Claim No. 780688823

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Pro se

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For the Secretary

DECISION AND ORDER

On October 14, 2010, 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 October 21, 2010, 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 October 21, 2010.)

Background

Petitioner executed and delivered a Retail Installment Contract-Security Agreement (“Note”) to CMH Homes, Inc. in the amount of \$30,970.95, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (“Sec’y Stat.”), filed November 8, 2010, ¶ 2, Ex. A.) Contemporaneously, on April 9, 2003, the Note was assigned by CMH Homes, Inc. to Vanderbilt Mortgage and Finance, Inc. (Id.) After default by Petitioner, the Note was assigned to HUD by Vanderbilt Mortgage and Finance, Inc., under the regulations governing the Title I Insurance Program. (Sec’y Stat., ¶ 4, Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, Financial Operations Center of HUD (“Porter Decl.”), dated November 8, 2010, ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$15,553.71 as the unpaid principal balance as of October 31, 2010;
- (b) \$1,710.72 as the unpaid interest on the principal balance at 4.0% per annum through October 31, 2010;
- (c) \$2,672.74 as the unpaid penalties and \$423.99 as the administrative cost as of October 31, 2010; and
- (d) interest on said principal balance from November 1, 2010, at 4.0% per annum until paid.

(Sec’y Stat., ¶ 5, Ex. #2, Porter Decl., ¶ 4.)

A Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings dated September 24, 2010 was sent to Petitioner. (Porter 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. As of this date, Petitioner has not entered into a written repayment agreement. (Sec’y Stat., ¶ 9, Porter Decl., ¶ 8.) As a result, the Secretary proposes a repayment schedule of \$566.00 per month, which will liquidate the debt in approximately three years, or 15% of Petitioner’s disposable income. (Sec’y Stat., ¶ 10, Porter Decl., ¶ 9.)

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 states that he did not owe the alleged debt because it did not exist. Petitioner claims more specifically that: “My trailer was resold therefore I don’t feel I owe that full amount.” (Petitioner’s Request for Hearing, dated October

14, 2010). To date, Petitioner has failed to provide the necessary documentation in support of his claim.

The Secretary argues, on the other hand, that the Petitioner's debt became due when the first mortgage was paid in full. As support, the Secretary submitted a copy of the Retail Installment Contract-Security Agreement ("Note") bearing Petitioner's signature, in which Petitioner accepted and agreed to the terms and covenants of the Retail Installment Contract-Security Agreement. (Sec'y Stat., Attach Note, p.2; Porter Decl., ¶ 3.) According to the Secretary, "on April 9, 2003, the Note was assigned by CMH Homes, Inc. to Vanderbilt Mortgage and Finance, Inc." (Sec'y Stat. ¶ 3.) Consistent with the terms and conditions of the Note, Petitioner is now legally obligated to pay the debt that is the subject of this proceeding.

While the Petitioner was ordered on three occasions to file documentary evidence which will prove that the alleged debt is either unenforceable or not past due, Petitioner failed to comply with any of the Orders issued by this Office. (Notice of Docketing, dated October 21, 2010; Order, dated December 29, 2010, and Order to Show Cause, dated January 28, 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, without any documentary evidence from Petitioner to refute or rebut the Secretary's claim and supporting documentation, I find that Petitioner's claim challenging the amount of the alleged debt must fail for lack of proof.

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 at 15% of Petitioner's disposable income.


Vanessa L. Hall
Administrative Judge

March 10, 2011