



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

In the Matter of:

Charles Ralph,
Petitioner

HUDOA No. 11-M-CH-AWG09
Claim No. 721006027

Charles Ralph
4318 147th Place SE
Bothell, WA 98012-4714

Pro se

Sara J. Mooney, Esq.
US Department of Housing and
Urban Development
Office of Assistant General Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

Counsel for the Secretary

DECISION AND ORDER

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 are designated to determine whether the Secretary may collect the alleged debt in this case by means of administrative wage garnishment. 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 proving the existence and amount of debt in this case. 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 any repayment schedule proposed by the Secretary are unlawful, would cause 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 20, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

Background

On November 6, 2006, HUD advanced funds to Petitioner's FHA insured lender in order to bring current Petitioner's overdue mortgage payment and prevent foreclosure on Petitioner's primary mortgage loan. (Secretary's Statement ("Sec'y Stat."), filed November 15, 2010, ¶ 1.) In conjunction with this foreclosure relief, Petitioner executed a Partial Claims Promissory Note ("Note") in favor of the secretary. (*Id.*) The Note cited specific events that would cause the debt to HUD to become immediately due and payable. One of those events was when Petitioner paid in full, all amounts due under the primary FHA note and related mortgage. (Sec'y Stat., ¶ 2.) On or about January 26, 2009, the FHA insurance on the first mortgage was terminated, as the lender indicated that the mortgage had been paid in full. (Sec'y Stat., ¶ 3.) The Secretary now claims that the Note is due and that Petitioner has failed to make payments as agreed in the Note. (Sec'y Stat., ¶ 5.)

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD. The Secretary has made efforts to collect from Petitioner but has been unsuccessful. (Sec'y Stat., ¶ 5.) On March 1, 2010, a Wage Garnishment Order was issued to Petitioner's employer. (Sec'y Stat., ¶ 9.) Based on the issuance of the garnishment order, Petitioner's pay has been garnished 23 times, totaling \$8,108.73. (Sec'y Stat., Ex. 2; Declaration of Gary Sautter, Acting Director, Asset Recovery Division, HUD Financial Operations Center ("Sautter Decl."), dated November 10, 2010, ¶ 9.) The Secretary alleges that Petitioner is now indebted to HUD in the following amounts:

- (a) \$3,147.28 as the unpaid principal balance as of October 30, 2010
- (b) \$7.87 as the unpaid interest on the principal balanced at 4% per annum through October 30, 2010; and
- (c) interest on said principal balance from November 1, 2010 at 3% per annum until paid.

(Sec'y Stat., ¶ 6, Ex. 2; Sautter Decl., ¶ 5.)

On or about January 28, 2010, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner. (Sec'y Stat., ¶ 7.) Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec'y Stat., ¶ 8.) Petitioner has further declined to comply with the Secretary's attempts to obtain documentation of Petitioner's income. (Sec'y Statement, ¶ 10.) The Secretary's proposed repayment schedule is 15% of Petitioner's disposable pay, or the amount of his most recent garnishment of \$577.75 bi-weekly. (*Id.*; Sautter Decl., ¶ 10.)

Discussion

Petitioner challenges the enforceability of the alleged debt in this case on the grounds that he did not know about it. ("Petitioner's Request for a Hearing ("Pet'r Hr'g Req."), filed

September 13, 2010.) Alternatively, Petitioner alternatively requests a payment plan to settle the remaining debt at issue in this case. (Pet'r Hr'g Req., ¶ 2.)

Petitioner asserts that he does not owe the debt because he did not know about it. Petitioner states, "My wife and I have searched all of our records and still have been unable to find where we had anything to do with HUD." (Pet'r Hr'g Req., ¶ 1.) Petitioner, however, has not produced any documentary evidence to prove his assertion that he does not owe the full amount of the debt, and, therefore, has not met his burden of proof. Further, his statement "[A]fter paying at least 67% of the due bill is there any way we can work out a payment plan..." amounts to a ratification and an admission that he owes the debt. (Pet'r Hr'g Req., ¶ 2.) Finally, The Secretary met his burden of proof to show the amount of the debt by filing his Statement, signed affidavit from Mr. Sautter and a copy of the Note, signed by Petitioner and his wife, all reflecting the amount of the debt alleged in this case.

Petitioner is permitted to present evidence that no debt exists or that the amount is incorrect. (31 C.F.R. § 285.11(f)(8)(ii).) On two separate occasions, this Office ordered Petitioner to file documentary evidence to prove the alleged debt is not enforceable or past due. In the Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), issued on October 20, 2010, this Office ordered Petitioner to file "documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due." (Notice of Docketing.) Petitioner failed to respond to the Notice of Docketing. On January 4, 2011, this Office again ordered Petitioner to file documentary evidence on or before January 21, 2011, to prove that the Note was either paid or is unenforceable. The order also stated: "Failure to comply with this Order shall result in a decision based on the documents in the record of this proceeding." (emphasis in original)

Petitioner also failed to comply with the January 4, 2011 Order to submit evidence that the alleged debt in this case is not enforceable or past due. This Office has held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable." Bonnie Walker, HUDBCA No. 95-G-NY-T300, (July 3, 1996). Since Petitioner has not offered any evidence to prove that the debt is unenforceable, I find that Petitioner's argument fails for want of proof.

Finally, Petitioner requests a payment plan to settle the alleged debt with HUD. (Pet'r Hr'g Req., ¶ 2.) Petitioner is advised that this Office is not authorized to consider any settlement offer or any waiver of interest request on behalf of HUD. However, Petitioner may wish to discuss this matter with Counsel for the Secretary or Mr. Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

ORDER

For the reasons set forth above, 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.



H. Alexander Manuel
Administrative Judge

February 16, 2011