



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

In the Matter of:

Khampheng Phabmixay,
Petitioner

HUDOA No. 11-M-CH-AWG106
Claim No. 721000314

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Pro se

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DECISION AND ORDER

On June 17, 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) and (f)(10), on June 20, 2011, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision. This Order of Stay is effective immediately, but is not retroactive against any wage withholding order previously issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral, dated June 20, 2011.)

Background

As a means of providing foreclosure relief, HUD advanced funds to the FHA insured lender to bring Petitioner's mortgage current. (Secretary's Statement (Sec'y Stat.) ¶ 2, filed Aug. 17, 2011; Declaration of Gary Sautter, Acting Director, Asset Recovery Division, HUD Financial Operations Center ("Sautter Decl.") ¶ 4, dated June 29, 2011.) In Connection with this foreclosure relief, Petitioner executed a Subordinate Note in favor of the Secretary. (Sec'y Stat. ¶ 2; Sautter Decl. ¶ 4.) The Note cited specific events that made the debt become due and payable. One of those events was when Petitioner paid, in full, all amounts due under the primary note and related mortgage insured by the Secretary. (Sec'y Stat. ¶ 3; Sautter Decl. ¶ 4.) The Note is secured by a recorded Subordinate Deed of Trust. (Sec'y Stat. ¶ 2; Sautter Decl. ¶ 4.) On or about July 31, 2001, the FHA insurance on the primary mortgage was terminated, as the lender indicated that the mortgage was paid in full. (Sec'y Stat. ¶ 4; Sautter Decl. ¶ 4.)

HUD has attempted to collect on the debt from Petitioner, but Petitioner remains delinquent. (Sec'y Stat. ¶ 6; Sautter Decl. ¶ 5.) The Secretary alleges that Petitioner is indebted to HUD on the claim in the following amounts:

- (a) \$10,198.35 as the unpaid principal balance as of May 31, 2011;
- (b) \$834.60 as the unpaid interest on the principal balance at 4.0% per annum through May 31, 2011; and
- (c) interest on said principal balance from June 1, 2011 at 4.0% per annum until paid.

(Sec'y Stat. ¶ 8; Sautter Decl. ¶ 5.) A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated May 18, 2011, was sent to Petitioner. (Sec'y Stat. ¶ 7; Sautter Decl. ¶ 6.) 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. (Sec'y Stat. ¶ 7; Sautter Decl. ¶ 7.) As of June 29, 2011, Petitioner has not entered into a written repayment agreement. (Sautter Decl. ¶ 8.)

The Secretary's proposed repayment schedule is \$310.00 per month, or 15% of Petitioner's disposable income, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards. (Sec'y Stat. ¶ 10; Sautter Decl. ¶ 10.)

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 disputes the enforceability of the debt

based on his claim that the title company already paid the debt. Petitioner additionally claims financial hardship due to his wife's unemployment. Specifically, Petitioner states:

This debt is created by a mistake we believed [sic] because when we sold and bought our current house, the title and escrow company should have already paid off all of our old debts from the proceeds back on 01/2004. If we are wrong then we would like to have a hearing about a payment plan that we can pay back. Currently my wife is unemployed.

(Pet'r's Hr'g Req., filed June 17, 2011.)

On August 18, 2011, this Office ordered Petitioner to file documentary evidence to prove that he is not indebted to HUD in the amounts claimed by the Secretary, or that the alleged debt in this case is not past due or not legally enforceable. (Order to Produce Evidence, dated Aug. 18, 2011.) Petitioner failed to file any evidence to prove that the title company paid the Subordinate Note. Rather, Petitioner's letter simply states that he has attempted to contact "the agent that did our loan paper, but he is no longer [at Countrywide]." (Pet'r's Letter, filed Sept. 16, 2011.) Similarly, Petitioner states that he attempted to "contact both the title and escrow offices that handle [sic] our transactions. . . . [but] [a]ll of the companies . . . have been out of business." (*Id.*)

Petitioner's allegation that the title and escrow company paid off the debt, without evidence to refute the evidence presented by the Secretary, is insufficient to substantiate Petitioner's claim. This Office has consistently held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable." *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-TY300 (July 3, 1996)). Without evidence to substantiate Petitioner's allegation that he does not owe this debt, Petitioner's claims must fail for lack of proof. I, therefore, find that Petitioner is indebted to the Department in the amount claimed by the Secretary.

Petitioner's financial hardship claim is similarly unsubstantiated. (Pet'r's Hr'g Req.) This Office notified Petitioner that a financial hardship claim required proof of payment of particular household expenses. (Notice of Docketing 2-3.) Petitioner has failed to file any documentary evidence in accordance with the Notice of Docketing. Therefore, Petitioner's financial hardship claim must also fail for lack of proof.

Finally, Petitioner states that he would like to "set up the payment plan that we can and will be able to fulfill." (Pet'r's Letter.) Petitioner may wish to negotiate repayment terms with the Department. However, this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Petitioner may wish to discuss this matter with Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5121, extension 4206.

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 of 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 15% of Petitioner's disposable income.



H. Alexander Manuel
Administrative Judge

October 18, 2011