



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

In the Matter of:

Daniel Skiye,
Petitioner

HUDOA No. 11-M-CH-AWG114
Claim No. 780720931

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Pro se

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DECISION AND ORDER

On June 27, 2011, Petitioner filed a request for 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" or "the Department") by Petitioner. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3716), authorizes federal agencies to utilize 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 adjudicate contested cases where the HUD Secretary seeks to collect debts by means of administrative wage garnishment. This case 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. Pursuant to 31 C.F.R. § 285.11(f)(10)(ii), HUD must suspend any currently active wage withholding order, beginning on the 61st day after receipt of the hearing request and continuing until a written decision has been rendered. (Notice of Docketing, Order and Stay of Referral ("Notice of Docketing"), 3; issued June 28, 2011.)

Background

On June 8, 2005, Petitioner executed and delivered a Note in the amount of \$18,000 to North Iowa Community Credit Union ("NICCU") for a home improvement loan that 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."), ¶ 2, filed July 26, 2011; Ex. A, Note.)

NICCU assigned the Note to the United States of America on March 26, 2010, after Petitioner failed to make payments on the Note. (*Id.*, ¶ 3.) The Secretary is the holder of the Note on behalf of the United States. (*Id.*)

HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec'y Stat. ¶ 5; Ex. B, Declaration of Gary Sautter, Acting Director, Asset Recovery Division, HUD Financial Operations Center ("Sautter Decl."), ¶ 4. dated July 13, 2011.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$4,820.44 as the unpaid principal balance as of June 30, 2011;
- (b) \$4.02 as the unpaid interest on the principal balance at 1.0% per annum through June 30, 2011; and
- (c) interest on said principal balance from July 1, 2011 at 1.0% per annum until paid.

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

A Notice of Intent to Initiate Wage Garnishment Proceedings, dated April 13, 2011, was sent to Petitioner. (Sec'y Stat. ¶ 6; Sautter 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. (Sec'y Stat., ¶ 7; Sautter Decl., ¶ 6.) Petitioner has not entered into such an agreement.

On May 16, 2011, an Administrative Wage Garnishment Order was sent to Petitioner's employer. (Sec'y Stat., ¶ 9; Sautter Decl., ¶ 7.) The Order has resulted in one garnishment, of \$149.05. (Sec'y Stat., ¶ 9; Sautter Decl., ¶ 8.)

The Secretary has been unable to obtain a copy of Petitioner's current pay statement. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 9.) The Secretary therefore requests a repayment schedule of either 15% of Petitioner's disposable monthly income, or \$149.05 bi-weekly. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 9.)

Discussion

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).

As evidence of the existence and amount of the debt here, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note and the sworn testimony of the Acting Director of HUD's Asset Recovery Division. (See Sec'y Stat; Ex. A; Ex. B). I find that the Secretary has therefore met his burden.

Petitioner disputes the amount of the alleged debt and the garnishment amount. Specifically, Petitioner states that the amount of the debt is "in question by myself and the bank." (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed June 27, 2011.) Petitioner also contends that a garnishment of the amount requested by the Secretary will create a financial hardship for him. (*Id.*)

This Office gave Petitioner 45 days from the date of the Notice of Docketing — June 28, 2010 — to "file documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due." (Notice of Docketing, 2.) Petitioner's evidence would therefore have been due on or about August 15, 2011. Petitioner failed to file evidence showing financial hardship or a contested debt amount by that date.

On September 15, 2011, this Office again ordered Petitioner to file, no later than October 14, 2011, documentary evidence to prove that the debt in this case is not enforceable or past due. (Order, issued September 15, 2011.) The Order also stated that "[F]ailure to comply with this Order may result in sanctions being imposed by the Court . . . including judgment being entered in favor of the opposing party, or a decision based on the record of this proceeding." Petitioner failed to comply with the Order.

The Secretary has introduced documentary evidence proving that Petitioner signed the subject Note, that the Note was subsequently assigned to HUD, and that Petitioner has failed to make payments upon the Note. Petitioner, meanwhile, has failed to present evidence that the amount of the alleged debt is incorrect or that a bi-weekly garnishment of \$149.05 will cause a financial hardship, despite being ordered twice to produce such evidence. I therefore find that Petitioner has failed to meet his burden of proof, and so remains liable for the debt in the amount claimed by the Secretary.

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

December 7, 2011