



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

In the Matter of:

**Mark Curtis,**  
Petitioner

HUDOA No. 11-M-CH-AWG115  
Claim No. 78-0259815-OA

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*Pro se*

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**DECISION AND ORDER**

On or about May 19, 2011, Petitioner was notified that, pursuant to 31 U.S.C. §§ 3716 and 3720A, the Secretary of the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary") intended to seek administrative offset of any federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD.

On July 6, 2011, Petitioner filed a request for a hearing concerning the existence, amount or enforceability of the debt. The Office of Appeals has been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. § 17.152(c). As a result of Petitioner's hearing request, referral of the debt to the U.S. Department of the Treasury for administrative offset was temporarily stayed by this Office on July 14, 2011, until the issuance of a written decision by the Administrative Judge. (Notice of Docketing, Order and Stay of Referral, dated July 14, 2011.)

## **Background**

On April 22, 1993, Petitioner signed and entered into a Manufactured Home Retail Installment Sales Contract and Security Agreement with Louisiana Mobile Homes, Inc. (Secretary's Statement ("Sec'y Stat.") ¶ 2, filed July 18, 2011; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl.") ¶ 3, July 25, 2011.) On that same day, Petitioner also signed and delivered to Louisiana Mobile Homes, Inc. a promissory note ("Note") in the amount of \$49,730.40 for a mobile home loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat. ¶ 2; Dillon Decl. ¶ 3.) The Note was simultaneously assigned to Green Tree Financial Corp-Louisiana. (Sec'y Stat. ¶ 3; Dillon Decl. ¶ 3.) On July 10, 2011, Green Tree assigned the Note to HUD. (Sec'y Stat. ¶ 3; Dillon Decl. ¶ 3.)

HUD has attempted to collect the amount due under the Note, but Petitioner remains in default. (Sec'y Stat. ¶ 4; Dillon Decl. ¶ 4.) The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$12,673.85 as the unpaid principal balance as of June 30, 2011;
- (b) \$6,415.98 as the unpaid interest on the principal balance at 5.0% per annum through June 30, 2011; and
- (c) interest on said principal balance from July 1, 2011, at 5.0% per annum until paid.

(Sec'y Stat. ¶ 6; Dillon Decl. ¶ 4.) A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated May 19, 2011, was mailed to Petitioner. (Sec'y Stat. ¶ 5; Dillon Decl. ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec'y Stat. ¶ 5; Dillon Decl. ¶ 6.) Petitioner offered a lump sum payment of \$2,000 in exchange for releasing the debt, but this offer was rejected by Brian Dillon. (Sec'y Stat. ¶ 5.)

The Secretary's proposed repayment schedule is \$103.10 per week, which is 15% of Petitioner's disposable pay. (Sec'y Stat. ¶ 17; Dillon Decl. ¶ 8.)

## **Discussion**

Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), if Petitioner disputes the existence or amount of the debt Petitioner "must present, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect." Petitioner objects to the enforceability of the debt on four grounds: (1) the existence of a divorce agreement between Petitioner and his ex-spouse; (2) the Texas statute of limitations; (3) financial hardship; and (4) HUD's failure to provide Petitioner with notice of how the total amount of the debt was calculated. (Pet'r's Hr'g Req., filed July 6, 2011.)

Petitioner first states that the debt "was given up to my ex-wife and because she didn't pay for it HUD says they don't recognize it." (Pet'r's Hr'g Req.) In contrast, the Secretary states that Petitioner's divorce from his ex-spouse has no bearing on his liability for the debt as a co-debtor. (Sec'y Stat. ¶ 10.)

This Office has previously held that co-signers of a loan are jointly and severally liable to the obligation, and as a result, "a creditor may sue the parties to such obligation separately or together." *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). As such, "the Secretary may proceed against any co-signer for the full amount of the debt" because each co-signer is jointly and severally liable for the obligation. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Additionally, the Secretary's right to collect the alleged debt in this case emanates from the terms of the Note. *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the subject debt, he must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release him from his obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (Mar. 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (Oct. 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (Oct. 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (Jan. 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (Feb. 28, 1986).

In the instant case, Petitioner has failed to produce evidence of a written release from his obligation to pay the alleged debt or evidence of valuable consideration paid to HUD in satisfaction of the debt, thus rendering the alleged debt unenforceable. While Petitioner may be divorced from his ex-spouse, neither the Secretary nor the lender was a party to the divorce action. So as a recourse, Petitioner may seek to enforce, in the state or local court, the divorce decree that was granted against his ex-wife so that Petitioner may recover from his ex-spouse monies paid to HUD by him in order to satisfy this legal obligation. See *Michael York*, HUDBCA No. 09-H-CH-AWG36, at 3 (June 26, 2009). I find, therefore, without proof of a written release, Petitioner remains legally obligated to pay the subject debt as a co-signor on the Note.

Second, Petitioner states that the Texas statute of limitations bars HUD's collection of this debt. (Pet'r's Hr'g Req.) In response, the Secretary states that there is "no statute of limitations which bars agency enforcement actions by means of administrative wage garnishment." (Sec'y Stat. ¶ 12.)

In *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938), the U.S. Supreme Court held that, "Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state." (emphasis added). In this case, there exists an applicable act of Congress, 31 U.S.C. § 3720D, a federal statute that supersedes the application of any state statute of limitations. While 31 U.S.C. § 3720D does not contain a statute of limitations for filing a wage garnishment action, it does provide:

- (a) Notwithstanding any provision of State law, the head of an executive, judicial, or legislative agency that administers a program that gives rise to a delinquent nontax debt owed to the United States by an individual may in accordance with this section garnish the disposable pay of the individual to collect the

amount owed, if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual.

*See also BP America Prod. Co. v. Burton*, 549 U.S. 84, 91-95 (2006) (holding that the statute of limitations in 28 U.S.C. § 2415(a), barring federal contract actions for money damages after six years, only applied to court actions and not to administrative payment orders). Thus, it is well settled that “the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights.” *United States v. Summerlin*, 310 U.S. 414, 416 (1940). Any delay in pursuing HUD’s claim does not prevent the Secretary from enforcing the terms of the Note. Therefore, this Court finds that the Secretary is not barred by a statute of limitations from initiating wage garnishment proceedings against Petitioner for the debt that is the subject of this proceeding.

Petitioner also objects to the debt because he has received no paperwork reflecting how the debt amount was calculated. (Pet’r’s Hr’g Req.) However, the Notice of Docketing stated:

Documents relating to this alleged debt are not in the possession of this Office. Petitioner may request copies of these documents by writing to: Debra Mele Cox, U.S. Department of Housing and Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY 12203.

(Notice of Docketing 3.) It was Petitioner’s responsibility to request any documentation regarding his debt. In any event, the Secretary provided a copy of the Note which states the amount of Petitioner’s debt. (Sec’y Stat., Ex. C.) Therefore, Petitioner has been provided with documentation to support the amount of the debt as alleged by the Secretary.

Finally, Petitioner states that he “cannot afford to be deducted for this.” (Pet’r’s Hr’g Req.) In support of his financial hardship claim, Petitioner filed copies of bills and proofs of payment. (Petitioner’s Documentary Evidence (“Pet’r’s Doc. Evid.”), filed Sept. 9, 2011.) Petitioner’s weekly pay statements indicate an average weekly income of \$1216.63, or \$4,866.52 monthly. The Secretary is authorized to garnish up to 15% of the debtor’s disposable pay, which is determined “after the deduction of health insurance premiums and any amounts required by law to be withheld. . . . includ[ing] amounts for deductions such as social security taxes and withholding taxes.” 31 C.F.R. § 285.11(c). After subtracting allowable deductions for federal tax, \$320.88; FICA, \$237.84; health insurance, \$553.84; dental insurance, \$103.28; disability, \$17.04; critical illness, \$31.88; and accident insurance, \$15.12, Petitioner is left with a monthly disposable income of \$3,586.64.

Petitioner submitted documentary evidence of the following essential monthly household expenses: groceries and clothing, 763.45; rent, \$535.46; prescriptions, \$50.00; car insurance, \$139.74; car payment, \$452.39; electricity, \$144.59; phone, \$159.73; sewer/water, \$59.38; gas, \$36.53; gasoline, \$153.53; medical bills, 42.60; and tires, \$72.00. (Pet’r’s Doc. Evid.) The following expenses are not included as part of Petitioner’s essential household expenses because Petitioner has not submitted sufficient documentary evidence to establish that they are essential household expenses: dining out expenses, 48.76; air conditioning repair bill, \$507.23;

Continental Airlines credit card, \$150.00, Mobil Oil credit card, \$18.00; Priceline credit card, \$401.43; cable, \$100.00; and CareCredit credit card, \$74.00. (*Id.*) Thus, Petitioner's essential monthly household expenses total \$2,799.35. (*Id.*)

Petitioner's disposable income of \$3,586.64 exceeds his monthly living expenses of \$2,799.35 by \$787.29. A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$537.99 per month and would leave Petitioner with a positive balance of \$249.30. As a result, Petitioner has not met his burden of establishing, by a preponderance of the evidence, that the Secretary's proposed repayment schedule creates a financial hardship for him. Therefore, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

### **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.



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H. Alexander Manuel  
Administrative Judge

October 13, 2011