



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

In the Matter of:

**JAMES FUGATE,**

Petitioner.

HUDOA No. 11-M-CH-AWG135

Claim No. 780147697-OA

James Fugate  
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Perris, CA 92571

*Pro se*

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**DECISION AND ORDER**

On August 26, 2011 this Office received Petitioner's request for a hearing concerning the proposed administrative wage garnishment of her income relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary"). 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 adjudicate contested cases where the Secretary seeks to collect an alleged debt 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 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 any proposed 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 August 30, 2011, this Office stayed the issuance of a

wage withholding order until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral (“Notice of Docketing”), 2.)

### **Background**

On September 6, 1997, Petitioner executed and delivered a Note to Marina Mortgage Company in the amount of \$23,500.00<sup>1</sup> 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. (Sec’y Stat., ¶ 1; Sec’y Stat., Exh. A, Note.) Thereafter, Marina Mortgage Company assigned the Note to Citizens Thrift & Loan. (Sec’y Stat. ¶ 1.)

Petitioner failed to make payments as agreed in the Note. (Sec’y Stat., ¶ 4.) Consequently, FirstPlus Bank F/K/A Citizens Thrift & Loan Association, assigned the Note to the United States of America under the regulations governing the Title I Insurance Program. (Sec’y Stat., ¶ 4.) HUD has attempted to collect the amounts due under the Note but Petitioner remains in default. (*Id.* at ¶ 2.) The Secretary alleges Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$21,726.26 as the unpaid principal balance as of August 31, 2001;
- (b) \$0 as the unpaid interest on the principal balance at 5.0% per annum through August 31, 2011; and
- (c) interest on said principal balance from September 1, 2011 at 5.0% per annum until paid.

(Sec’y Stat. ¶ 2; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center for HUD (“Dillon Decl.”), ¶4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings<sup>2</sup> dated June 17, 2011 was sent to Petitioner. (Dillon 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. (*Id.* at ¶ 6.) To date, no written repayment agreement has been received. (*Id.*)

A Wage Garnishment order was sent to Petitioner’s employer by HUD. (Sec’y Stat. ¶ 6.) Based on the issuance of the Wage Garnishment Order, Petitioner’s pay has been garnished eighty-eight times for a total of \$12,744.80. (*Id.*) That total is reflected in the amount alleged to be due by the Secretary above. (*Id.*)

Petitioner submitted a recent copy of his weekly pay statement for the pay period ending August 18, 2011 to HUD. (Sec’y Stat., ¶ 8.) The pay statement indicates Petitioner’s gross pay for the period totaled \$1,227.65; less allowable deductions of \$317.96 indicate a net disposable pay of \$909.69 weekly. (*Id.*, ¶¶ 8-9; Sec’y Stat., Exh. A1, Pay Statement.) Based on the pay

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<sup>1</sup> The Secretary incorrectly cites the amount of the Note as being \$23,500.009 in his Secretary’s Statement. (Sec’y Stat., ¶ 1; *see* Note, 1.)

<sup>2</sup> The Secretary incorrectly cites the notice as being “a notice of intent to collect by Treasury Offset.” (Sec’y Stat., ¶ 3; *see* Dillon Decl. ¶5.)

statement, the Secretary proposes a repayment schedule of \$136.56 weekly or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 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 amount of the alleged debt is incorrect. Petitioner may also 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. 31 C.F.R. § 285.11(f)(8)(ii).

In this case, Petitioner does not dispute the existence of the debt. Rather, Petitioner disputes that he owes the full amount alleged by the Secretary to be due. (Pet'r's Hr'g Req.) Specifically, Petitioner states "I was told the proceeds from the sale of the house would pay off any existing loan. I was not even aware this loan was still outstanding until June 2009." (*Id.*) Petitioner then argues that, had he known the debt in this case remained unpaid, he "would have dealt with this a lot sooner" thereby avoiding the significant accrual of interest. (Pet'r's Letter, dated Sept. 3, 2011.) Petitioner adds, "Just the accrued interest is more [than] the original loan at this point." (*Id.*)

Interest arises from the unpaid principal. *In re Thomas R. Herrin*, HUDBCA No. 88-2848-H372 (Jun. 28, 2010). Therefore, "when the principal balance is valid and legally enforceable, so to [sic] is the interest that attaches to it." *Id.* In this case, Petitioner argues that he should not have to pay the full amount of the debt in this case because of the significant accrual of interest that occurred while he was under the belief that the Note had been satisfied. Petitioner does not, however, contest the validity or legal enforceability of the debt. Accordingly, this Office finds the principal balance due in this case to be past due and legally enforceable and, therefore, Petitioner is also liable for the unpaid interest.

Petitioner also claims that garnishment of his wages imposes a financial hardship on him. Specifically, he states:

I am having real financial difficulty because of the amount that is taken from my check monthly due to the wage garnishment by HUD...Because of all the stress associated with this money situation and it adversely causing other money shortages and my health is being affected. Because of stress I now have diabetes and have to take medication daily to control it. (just another expense).

(Pet'r's Letter.) In support of his claim, Petitioner included a copy of his completed Debt Resolution Financial Statement ("Form HUD-58142") with his hearing request. On the Form HUD-58142, Petitioner listed several monthly household expenses totaling \$1,769.00 and other debts, and installment accounts. (Hr'g Req., Form HUD-58142.)

On two separate occasions, this Office ordered Petitioner to file documentary evidence in support of his claim that repayment of the debt would cause a financial hardship to Petitioner.

(See, Notice of Docketing, 2; Order, dated October 4, 2011.) Both orders required Petitioner to file documentary evidence in the form of bills and receipts to prove his financial hardship claim. The Notice of Docketing specifically stated, "Petitioner's documentary evidence should not be limited to a mere list of expenses, but instead must include proof of payment of household expenses." (Notice of Docketing, 2.) The most recent order requiring Petitioner to file her documentary evidence included the following language "Failure to comply with this Order may result in the imposition of sanctions in accordance with 24 C.F.R. §26.4, including the entry of judgment in favor of the opposing party, or a decision based on the documents of record." (Order.)

Petitioner failed to comply with the orders issued by this office. With the exception of the Form HUD-58142, Petitioner has not filed any evidence of his financial circumstances. Still, this Office has determined that "credit may be given for certain essential household expenses, such as rent and food, where Petitioner has not provided bills or other documentation, yet the financial information submitted by Petitioner...[was found to be] generally credible." *In re Charles R. Chumley*, HUDOA No. 09-M-CH-AWG09, \*3 (Apr. 6, 2009) (citing *In re Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). In this case, Petitioner indicates he does not pay rent or a mortgage and has a food expense of \$600.00 monthly. (Pet'r's Form HUD -58142.) Petitioner did not submit any evidence to prove the other expenses listed on Petitioner's Form HUD-58142 as required by the orders issued by this Office. Accordingly, this Office finds that Petitioner has not submitted credible evidence and his financial hardship claim fails for want of proof. See, *Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)) (stating that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.").

### **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 in an amount equal to \$136.46 weekly or 15 percent of Petitioner's disposable pay.



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H. Alexander Manuel  
Administrative Judge

January 3, 2012