



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

In the Matter of:

Jacob Cornner,
Petitioner

HUDOA No. 11-M-CH-AWG62
Claim No. 780707706

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Pro se

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DECISION AND ORDER

On February 28, 2011, Petitioner filed a hearing request concerning a proposed administrative wage garnishment action by the U.S. Department of Housing and Urban Development ("HUD") to collect an alleged debt against Petitioner. 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 alleged debt in contested administrative wage garnishment proceedings is enforceable against the 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 and by 24 C.F.R. Part 26, Subpart A. Pursuant to 31 C.F.R. § 285.11(f)(10)(ii), on March 1, 2011, this Office ordered the U.S. Department of the Treasury to suspend the active wage withholding order, effective May 2, 2011, and continuing until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), issued March 1, 2011.)

Background

On June 9, 1996, Petitioner executed and delivered to Jim Tatman's Mobile Homes Inc. a Manufactured Home Retail Installment Contract ("Note") in the amount of \$84,311.00. (Secretary's Supplemental Statement ("Sec'y Supp. Stat."), filed June 14, 2011¹, ¶ 1; Ex. A, Note.) The Note, contemporaneously assigned to CU Factory Built Lending, LP, was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Supp. Stat., ¶ 3.) Petitioner failed to make payments on the Note, and CU Factory Built Lending, LP, assigned the Note to HUD under the regulations governing the Title I Insurance Program. (Sec'y Supp. Stat., ¶ 4; Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated March 17, 2011, ¶ 3.)

HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec'y Stat. ¶ 5; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$6,414.90 as the unpaid principal as of February 28, 2011;
- b) \$1,144.84 as the unpaid interest on the principal balance at 3% per annum through February 28, 2011;
- c) \$1,226.33 as the unpaid penalties and administrative costs as of February 28, 2011; and
- d) interest on said principal balance from February 28, 2011, at 3% per annum until the Note is paid in full.

(Sec'y Supp. Stat., ¶ 7; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated February 16, 2010, was mailed to Petitioner. (Sec'y Supp. Stat., ¶ 6; Dillon 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, but Petitioner did not do so at that time². (Sec'y Supp. Stat., ¶ 6; Sautter Decl., ¶ 6.)

A Wage Garnishment Order, dated March 19, 2010, was issued to Petitioner's employer. (Sec'y Supp. Stat., ¶ 8; Dillon Decl., ¶ 9.) Based on the Wage Garnishment Order, two garnishment payments of \$72.00 each have been applied to the debt. (Sec'y Supp. Stat., ¶ 8; Dillon Decl., ¶ 8.) Because Petitioner has not provided the Secretary with a pay statement, the Secretary requests a proposed repayment schedule of \$72.00 per week or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 9.)

¹ The Secretary originally submitted a Statement on March 28, 2011. For unknown reasons, that Statement was not filed by this Office. Upon Order, dated June 9, 2011, the Secretary resubmitted the Statement.

² In his Hearing Request, Petitioner attempted to enter into a repayment agreement, but his offer of a \$2,400 lump sum payment was not accepted by HUD. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed February 28, 2011; Dillon Decl., ¶ 10.)

Discussion

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 an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.*

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 Director of HUD's Asset Recovery Division. (See Sec'y Supp. Stat; Ex. A; Ex. B). I find that the Secretary has therefore met his burden.

Petitioner does not dispute the existence or enforceability of the debt. Rather, he asserts that a garnishment in the amount requested by the Secretary will create a significant financial hardship. (Pet'r's Hr'g Req., p. 1.) In support of this position, Petitioner has provided a Consumer Debtor Financial Statement, copies of checks used to pay utilities, and other documentary evidence. (*See* Pet'r's Hr'g Req.; Documents from Petitioner ("Pet'r's Docs."), filed August 24, 2011.)

This Office has held that financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *In re Shone Russell*, HUDOA No. 09-H-NY-KK15 (June 25, 2009) (*citing In re Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986)). However, the existence of financial hardship requires a mitigation of the amount of the garnishment allowable by law. 31 C.F.R. §§ 285.11(k)(3). Disposable income is defined as "that part of the debtor's compensation from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld . . . [including] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). Petitioner has not provided a pay statement, thereby making it impossible to accurately determine Petitioner's allowable deductions or, consequently, his disposable income. Such information is peculiarly in the hands of the Petitioner himself. Without that information this Office must analyze Petitioner's hardship claim on the basis of his gross income. According to Petitioner's Consumer Debtor Financial Statement, he earns \$1,920 per month.

The documentary evidence filed by Petitioner verifies monthly payments for the following essential household expenses: car payment, \$603; electricity, \$350. (Pet'r's Docs., p. 17, p. 9.) Petitioner's Consumer Debtor Financial Statement includes Petitioner's estimates of several additional monthly expenses, but Petitioner has failed to provide proof that these estimates are accurate. However, this Office has held that credit may be given for certain estimated living expenses when the "financial information submitted by Petitioner . . . [was found to be] generally credible" *In re David Herring*, HUDOA No. 07-H-NY-AWG53 (July 28, 2008) (*quoting In re Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). Petitioner's estimates are generally consistent with industry norms, and so have strong indicia of reliability. This Office will therefore credit Petitioner for monthly expenses in

the following amounts: child care, \$300; gasoline and auto repairs, \$250; telephone, \$100; clothing, \$100; natural gas, \$47; life insurance, \$20.

Petitioner lists an estimated cost of \$400 for food. In determining his food expenses, Petitioner asserts that he spends \$200 per month providing groceries for an 18-month-old son and live-in girlfriend. The remainder of his food estimate is comprised of restaurant bills. This Office does not consider restaurant bills to be an essential living expense, and so will only credit \$200 as Petitioner's monthly food costs. Petitioner also estimates monthly costs of \$174 for car insurance and \$100 for homeowner's insurance. However, there is no documentation to substantiate these claims, and costs for these services can vary widely. It is therefore impossible to determine whether these estimates are reasonable. Consequently, I find that they lack the necessary indicia of reliability and so will not be credited.

Additional expenses, though documented, will also not be credited. Specifically, car payments of \$290 and \$150 for Petitioner's second and third cars, respectively, are not creditable without evidence that the additional vehicles serve an essential function. Expenses for cable television (\$70) and lawn care (\$100) are similarly non-essential.

Finally, Petitioner offers evidence of payments for medical expenses (\$80) and credit cards (\$70). The evidence pertaining to the medical expenses states only that Petitioner receives prescriptions for "amphetamine salts." The evidence does not show that this is an essential expense or that it is an expense that will reoccur regularly. The medical costs therefore will not be credited. Petitioner has also failed to show that the items purchased with the credit cards were essential household goods. As such, these payments cannot be credited. *See Cynthia Ballard Rachall*, HUDOA No. 09-CH-AWG103 (August 6, 2009) (finding that the petitioner's credit card bills would not be included in her monthly expenses calculation because the petitioner failed to provide documentary evidence to show that the charges were for essential household expenses). Petitioner's essential expenses of \$2,020 surpass his gross monthly income. A garnishment of any amount would therefore create a significant financial hardship for Petitioner.

Petitioner next contends that his former spouse, a co-signer of the Note, should be required to pay half the debt. (Pet'r's Hr'g Req., p. 2.) 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." *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004).

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 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and*

Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

In the instant case, Petitioner has failed to produce sufficient evidence of either a written release or valuable consideration paid to HUD in satisfaction of the debt. Petitioner's offer of a \$2,400.000 lump sum payment was refused by HUD. (Pet'r's Hr'g Req., p. 2.; Dillon Decl. ¶ 10.) An agency is allowed to decline a repayment agreement request if the terms are not agreeable to the agency. 31 C.F.R. § 285.11(e)(2)(ii). HUD was therefore within its rights to refuse a \$2,400.00 payment as satisfaction for a nearly \$10,000 debt.

Petitioner further asserts that a lump sum payment of \$2,775.00 was tendered by him and accepted by HUD, and offers as evidence a letter from the U.S. Department of Justice accepting the settlement offer. (Pet'r's Docs., p. 2.) The words "payment paid" are hand-written at the bottom of the acceptance letter. Petitioner states that he "did make a payment of \$2,775.00," but that his debt has not been changed to reflect the payment. (*Id.* at p. 13.)

It is unclear from Petitioner's evidence what debt the settlement letter refers to, but it does not appear to relate to the debt that is the subject of this proceeding. The letter identifies the case as *USA v. Cypress Woodworks, LLC*, and is addressed to that company, care of Josh Cornner. (Pet'r's Docs., p. 2.) An unidentified document offered by Petitioner states that Josh Cornner is the sole owner of Cypress Woodworks, and that Jacob P. Cornner — the Petitioner — is an employee of that corporation. (*Id.* at p. 19.) Additionally, Petitioner's Consumer Debtor Financial Statement identifies "Josh James Cornner" as Petitioner's next of kin or other relative. (Pet'r's Hr'g Req., p. 3.) The evidence suggests, then, that the \$2,775.00 lump-sum payment was unrelated to the present case. As such, the payment does not represent valuable consideration paid to HUD in satisfaction of this debt³. Petitioner therefore remains legally liable for the debt.

Finally, Petitioner argues that his former spouse was awarded the property and its associated debts as part of their divorce settlement. (Pet'r's Hr'g Req., p. 2.) He does not, however, suggest that this agreement released him from his legal obligation to repay the instant debt. Indeed, Petitioner repeatedly acknowledges the validity of the debt, and expressly states that he is "not running away from this debt." *Id.* Petitioner therefore remains legally obligated to repay this debt, though he may seek to enforce his divorce decree in state or local court, thereby potentially recovering from his former spouse the monies paid to HUD to satisfy this debt. See *Michael York*, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3.

ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment shall remain in place **INDEFINITELY**. For the reasons stated above, it is

³ Even assuming the settlement did pertain to the instant case, the letter authorizes the U.S. Department of Treasury to garnish 15% of Petitioner's wages from January 30, 2011, and beyond. (Pet'r's Docs., p. 2.)

ORDERED that the Secretary is not authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at this time.

However, the Secretary shall not be prejudiced from re-filing this action in the future if Petitioner's income increases or Petitioner's expenses are mitigated.



H. Alexander Manuel
Administrative Judge

December 20, 2011