

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

**Jimmy W. Lamm, Jr.,**  
Petitioner

HUDOA No. 11-M-NY-AWG25  
Claim No. 721005815

**DECISION AND ORDER**

On December 6, 2010, Petitioner requested a hearing to contest a proposed administrative wage garnishment related to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). The Debt Collection Improvement Act of 1996 authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of nontax debts owed to the United States Government. 31 U.S.C. § 3720D.

The HUD Secretary has designated the administrative judges of this Office to conduct a hearing to determine whether the disputed debt is past due and legally enforceable. The 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 proving 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. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of the proposed 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)(10)(ii), this Office ordered the Secretary to suspend any active wage withholding order on the 61st day after receiving the hearing request and continuing until the issuance of this written decision. (Corrected Notice of Docketing, Order and Stay of Referral ("Notice of Docketing" or "Notice"), 3, dated November 30, 2010.)

**Background**

On December 3, 2000, Jimmy W. Lamm, Jr. ("Petitioner"), and his then-wife executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") in the amount of \$7,790.48. (Amended Secretary's Statement ("Sec'y Stat."), ¶ 5, filed January 14, 2011; Ex. B, Declaration of Brian Dillon, Acting Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated December 10, 2010, ¶ 4.) In exchange, HUD

advanced funds to Petitioner's lender, Wells Fargo Home Mortgage, Inc., to bring Petitioner's primary home mortgage current, thereby avoiding foreclosure. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 4.)

The Subordinate Note cites specific events that make the debt become due and immediately payable. One of these events is the payment in full of the primary mortgage. (See Note, ¶ 4(A)(i).) The Note also specifies that Petitioner must make payment at:

Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410, or any such other place as [HUD] may designate in writing by notice to Borrower.

(Note, ¶ 3(B).)

On or about April 7, 2003, the FHA insurance on the primary mortgage was terminated, as the lender indicated the mortgage was paid in full. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 4.) Petitioner has not made payment to HUD in the place or at the time specified in the Note, and HUD's attempts to collect the debt from Petitioner have been unsuccessful. (Sec'y Stat., ¶¶ 9-10; Dillon Decl., ¶ 5.) The Secretary therefore contends that Petitioner is indebted to HUD in the following amounts:

- (a) \$7,790.48 as the unpaid principal as of November 30, 2010;
- (b) \$271.32 as the unpaid interest on the principal balance at 3% per annum through November 30, 2010; and
- (c) Interest on said principal balance from December 1, 2010, at 3% per annum until the Note is paid in full.

(Sec'y Stat., ¶ 10; Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner on September 28, 2010, pursuant to 31 C.F.R. § 285.11(e). (Sec'y Stat., ¶ 11; 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 with the Department under terms agreeable to HUD. (Secretary's Certification of Compliance, ¶ 2, filed April 15, 2011.) To date, Petitioner has not entered into such an agreement.

The Secretary's attempts to obtain a pay statement from Petitioner have been unsuccessful. (Sec'y Stat., ¶ 24; Dillon Decl., ¶ 10.) The Secretary therefore requests a repayment schedule of either 15% of Petitioner's disposable monthly income, or \$225.00 per month. (Sec'y Stat., ¶ 24; Dillon Decl., ¶ 10.)

### Discussion

Petitioner disputes the existence of the alleged debt, and claims “I do not owe this debt” and that it is “currently awaiting trial in the state of Florida.” (Petitioner’s Hearing Request (“Pet’r’s Hr’g Req.”), p. 1, filed December 6, 2010.)

This Office issued a Corrected Notice of Docketing, Order and Stay of Referral on November 30, 2010, in response to a Hearing Request from Gina Lamm, Petitioner’s former wife.<sup>1</sup> However, Petitioner did not file his Hearing Request until December 6, 2010. As a result, Petitioner’s address was not included in the Notice of Docketing. He was therefore unaware of the Notice’s order requiring him to file documentary evidence within 45 days of the Notice.

In October of 2011, it was brought to this Office’s attention that Petitioner’s address had not been included in any official correspondence relating to this proceeding. As a result, Petitioner was apparently unaware of the Orders issued on January 9, 2011, June 7, 2011, and July 19, 2011.

Accordingly, an Order was sent to Petitioner’s updated address of record on October 18, 2011, requiring him to file, no later than December 2, 2011, documentary evidence proving that his alleged debt to HUD was not past due or not legally enforceable. (Order (“October 2011 Order”), issued October 18, 2011.) The Order stated “[F]ailure to comply with this Order may result in the imposition of sanctions . . . and may result in the entry of judgment in favor of the opposing party, or a decision based on the documents in the record of these proceedings.” (*Id.*) (emphasis in original).

A second Order, issued December 7, 2011, again required Petitioner to file his documentary evidence. (Order, (“December 2011 Order”), issued December 7, 2011.) The Order gave Petitioner until January 4, 2012, to respond, and included the admonition regarding possible imposition of sanction from the October 2011 Order.

In order to allow Petitioner ample time to file his response, this Office issued another Order giving Petitioner until February 27, 2012, to file his documentary evidence. (Order (“February 2012 Order”), issued February 1, 2012.) Again, this Order advised Petitioner that “[F]ailure to comply with this Order may result in the entry of judgment in favor of the opposing party, a decision based on the documents in the record of these proceedings, or other sanction deemed necessary by the Administrative Judge.” (*Id.*) (emphasis in original).

To date, Petitioner has not responded to any of the Orders and has not filed any documentary evidence showing that the alleged debt has been repaid or is not legally enforceable. In the complete absence of any evidence filed by Petitioner, this Court finds that

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<sup>1</sup> This proceeding was initially brought against both Jimmy and Gina Lamm. Counsel representing Gina Lamm filed a Hearing Request that this Office received on November 3, 2010. However, because the Secretary did not serve Gina Lamm with the requisite Notice of Intent to Initiate Wage Garnishment Proceedings, she was dismissed without prejudice. (See Order, issued January 9, 2011.) This Decision and Order does not address the legal arguments raised by Gina Lamm’s counsel, as they were made solely on behalf of Gina Lamm, and not Jimmy Lamm.

Petitioner is indebted to HUD in the amount claimed by the Secretary. The alleged debt is found to be past due and legally enforceable, and the Secretary's proposed repayment schedule is not found to create a financial hardship for Petitioner.

**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.

A handwritten signature in black ink, appearing to read "H. Alexander Manuel", written over a horizontal line.

H. Alexander Manuel  
Administrative Judge

April 3, 2012