

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

In the Matter of:

SCOTT FURNO,

Petitioner.

HUDOA No. 12-M-NY-AWG25
Claim No. 0892042 OAK 9249

April 19, 2012

DECISION AND ORDER

On December 14, 2011, Petitioner requested 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”). 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 Office of Hearings and Appeals has jurisdiction to determine whether Petitioner’s debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.81(b).

The administrative judges of this Office have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. 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.*)

Pursuant to 31 C.F.R. §285.11(f)(4), this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral, dated December 19, 2011.)

Background

On March 21, 1996, Petitioner executed and delivered a Retail Installment Contract (“Note”) to Oakwood Mobile Homes Inc., in the amount of \$28,010.88. The loan was contemporaneously assigned to Oakwood Acceptance Corporation. The loan later went into default under Governmental National Mortgage Association (“GNMA”) program requirements, and subsequently all rights, title and interest in Petitioner’s loan were assigned to GNMA. (Secretary’s Statement (“Sec’y. Stat.”), filed January 18, 2012, ¶ 2-5, Ex. A.) The Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12

USC 1703. (Sec'y Stat. ¶ 2.) GNMA, a division of HUD, is now the rightful holder of the note. (Sec'y Stat., ¶ 6; Sec'y Stat. Ex. 2, Declaration of Leslie Meaux, Director, GNMA Mortgage-backed Securities Division, ("Meaux Decl."), dated January 17, 2012, ¶ 5.)

Petitioner is currently in default on the Note. (Sec'y Stat. ¶ 7). HUD alleges that Petitioner remains indebted on the Note in the following amounts:

- (a) \$20,009.25 as the unpaid principal balance;
- (b) \$7,439.96 as the unpaid interest on the principal balance at 11.25% per annum through January 13, 2012;
- (c) interest on said principal balance from January 14, 2012 until paid.

(Sec'y. Stat., ¶ 7; Meaux Decl., ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated November 1, 2011, was sent to Petitioner. (Sec'y. Stat., ¶ 8; Meaux Decl., ¶ 7.) 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 HUD. (Sec'y. Stat., ¶ 10; Meaux Decl., ¶ 10.) As of December 9, 2011, Petitioner has not entered into a written repayment agreement in response to the November 1, 2011 Notice. (*Id.*)

Based on a review of Petitioner's bi-weekly pay statement, the Secretary, after accounting for allowable deductions, proposes a repayment schedule of 10% of Petitioner's disposable pay. (Sec'y Stat. ¶ 11; Meaux Decl., ¶ 9.)

Discussion

Pursuant to 31 C.F.R. §285.11 (f)(8)(ii), if Petitioner disputes the existence or amount of the debt the 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 proposed administrative wage garnishment on the ground that he does not owe the full amount of the debt. (Petitioner's Hearing Request ("Hr'g Req."), filed December 14, 2011.)

Petitioner objects to the administrative wage garnishment by stating that "mobile home was crashed on delivery" and "roof leaked and ruined the home." (Hr'g Req.) He further claims that he has "several other reasons" for disputing the amount of the debt he owes. (Hr'g Req.) However, Petitioner has failed on two separate occasions to provide this Office with evidence to support his claims or even state, with specificity, the basis for his claims. (*See* Order to Petitioner, dated March 1, 2012.) This Office ordered Petitioner to provide further evidence to support his claim on December 19, 2011, and again on March 1, 2012. (Notice of Docketing, Order, and Stay of Referral, dated January 9, 2012; Order to Petitioner, dated March 1, 2012.) Both orders stated with particularity that Petitioner must file evidence to support his claim that he does not owe the alleged debt. (*Id.*) Because he has not provided sufficient evidence to support his claim, Petitioner has failed to meet his burden of establishing, by a preponderance of

the evidence, that that he does not owe the full amount of the alleged debt. Therefore, the Court finds that Petitioner is legally obligated to pay the debt that is the subject of this proceeding.

ORDER

For the reasons set forth above, the Court finds the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amounts 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 10% of Petitioner's disposable income.



H. Alexander Manuel
Administrative Judge