

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

In the Matter of:

Bryce Wade Culbert,

Petitioner.

HUDOA No. 12-AM-CH-AG-135
Claim No. 721007406

January 24, 2013

DECISION AND ORDER

On September 27, 2012, Bryce Wade Culbert (“Petitioner”), filed 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 debts owed to the United States Government. 31 U.S.C. § 3720D.

The administrative judges of this Office are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if such action is contested by a 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. 17.61, *et seq.* HUD has not yet issued a wage garnishment order to Petitioner’s employer. Accordingly, pursuant to 31 C.F.R. § 285.11(f)(10)(i), the issuance of such an order is stayed until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral, dated September 27, 2012).

Background

On or about December 19, 2006, Petitioner executed and delivered to the Secretary a Subordinate Note (“Note” or “Subordinate Note”) in the amount of \$4,432.36. (Secretary’s Statement (“Sec’y Stat.”) ¶¶ 2-3, dated October 19, 2012; Ex. A, Note.) In exchange, the Secretary paid the arrearages on Petitioner’s FHA-insured mortgage and Petitioner avoided foreclosure of his primary residence. (Sec’y Stat., ¶ 2; Ex. B, Declaration of Brian Dillon, (“Dillon Decl.”), ¶ 4.)

The Subordinate Note described specific events that would cause the debt to become immediately due and payable. One of these events is the payment in full of the primary mortgage. (Sec’y Stat., ¶ 3; Note, ¶ 4(A)(I); Dillon Decl., ¶ 4)

On or about November 21, 2011, the FHA Insurance on the first mortgage was terminated, as the lender indicated the mortgage was paid in full. (Sec’y Stat., ¶ 4; Dillon Decl., ¶4.) The Note thus became due and payable at that time. The Secretary alleges that Petitioner

failed to make payment at the place and in the amount specified in the Note. As a result, the Secretary contends that Petitioner is indebted to HUD in the following amounts:

- (a) \$4,432.36 as the unpaid principal balance as of September 30, 2012, and
- (b) \$33.21 as the unpaid interest on the principal balance at 1.0% per annum through September 30, 2012, and
- (c) \$302.16 as the unpaid administrative costs and penalties balance as of September 30, 2012, and
- (d) interest on said principal balance from October 1, 2012, at 1% per annum until paid.

(Dillon Decl. ¶5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Garnishment Notice”), dated August 8, 2012, was mailed to Petitioner, in accordance with 31 C.F.R. 285.11(e). Id. at ¶7. The Garnishment Notice afforded Petitioner the opportunity to enter into a written repayment agreement, as required by 31 C.F.R. 285.11 (e)(2)(ii). Id. To date, Petitioner has not entered into such an agreement. (Dillon Decl. ¶¶7-8.)

The Secretary proposes a repayment schedule of either 15% of Petitioner’s disposable monthly income, or \$136.00 per month, which will liquidate the debt in approximately three years. (Sec’y Stat., ¶9; Dillon Decl., ¶9.)

Discussion

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 the debt does not exist or that the amount of the debt is incorrect. 31 C.F.R. §285.11(f)(8)(ii). Additionally, the Petitioner may present evidence that the terms of the 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.

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 Stat; Ex. A; Ex. B). I find that the Secretary has therefore met his burden.

Petitioner disputes the validity of the amount of the debt, and claims that when refinancing his home, a title search did not show the alleged debt. Petitioner’s letter, attached to Petitioner’s Request for Hearing. However, Petitioner has not corroborated this allegation and has not responded to an Order for Documentary Evidence requesting that he file evidence to support his claim.

The Notice of Docketing ordered Petitioner to file, “on or before November 1, 2012,” any documentary evidence proving that he did not owe all or part of the alleged debt. Notice of

Docketing, 2 (emphasis in original). Petitioner failed to comply with this Order. As a result, the Court issued an Order on November 7, 2012 ordering Petitioner to file his evidence “on or before November 28, 2012.” Order for Documentary Evidence (“Order”), issued November 7, 2012. The Order informed Petitioner that:

“Failure to comply with this Order may result in the imposition of sanctions that may include the entry of judgment in favor of the opposing party in this case, a decision based on the documents of record, or other sanctions deemed necessary and appropriate by the Administrative Judge.”

Order, p.1. (emphasis in original).

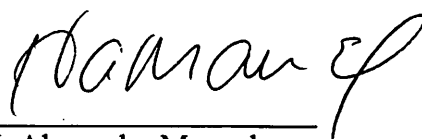
Petitioner also failed to respond to this Order, as well. To date, Petitioner has not filed any documentary evidence to support his claim that he does not owe the full amount of the debt. Petitioner has therefore failed to meet his burden of proving that the debt is not presently due and owing. Accordingly, I find Petitioner’s debt in this case to be past due and legally enforceable in the amount claimed by the Secretary.

On October 19, 2012, the Government filed a Motion for Leave to File Out of Time, in connection with its filing of the Secretary’s Statement in this case. Without objection, and upon consideration, the Government’s motion is GRANTED.

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.



H. Alexander Manuel
Administrative Judge