

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

In the Matter of:

KENNY JOHNSON,

Petitioner.

HUDOA No. 12-AM-NY-AG-131

Claim No. 780737414

January 28, 2013

DECISION AND ORDER

On September 25, 2012, Kenny Johnson ("Petitioner") requested a hearing concerning a proposed administrative wage garnishment in relation 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 collection of debts owed to the United States government.

Applicable Law

The administrative judges of this Office are designated to determine whether the Secretary of HUD ("Secretary") may collect on alleged indebtedness by means of administrative wage garnishment when such action is contested by a debtor. This Court conducts these hearings in accordance with procedures set forth in 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

The Secretary has the initial burden to prove the "existence or the amount of the alleged debt." 31 C.F.R. §285.11(f)(8). In contrast, Petitioner may present evidence that rebuts the existence or amount of the debt, or evidence that shows "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.*

On September 27, 2012, 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."))

Background

On or about May 18, 2010, Kenny Johnson ("Petitioner") executed and delivered a secured promissory note ("Note") to Domestic Bank in the amount of \$25,000.00. (Secretary's Statement ("Sec'y Stat.") ¶ 2; Ex. A, Note.) The lender required insurance against non-payment as a condition of lending, and HUD provided this insurance under Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat. ¶ 2; Ex. A, Note.)

Petitioner failed to make payments as agreed, and the holder of the note, Admirals Bank (previously known as Domestic Bank), transferred the note to HUD under the Title I insurance program. (Sec'y Stat. ¶ 3; Ex. C, Declaration of Gary Sautter ("Sautter Decl.") ¶ 3; Ex. A, Note ¶¶ 4-5.) This made HUD the payee. Treasury records indicate Petitioner had the opportunity to negotiate a payment arrangement in accordance with 31 C.F.R. § 285.11. (Sec'y Stat. ¶ 5-6; Ex. C, Sautter Decl. ¶ 5-6.) When negotiations failed, a Notice of Intent to Initiate Administrative Wage Garnishment proceedings was sent to Petitioner on July 23, 2012. (Sec'y Stat. ¶ 5; Ex. C, Sautter Decl. ¶ 5.)

On September 25, 2012, Petitioner requested a hearing ("Request for Hearing") claiming the terms of the proposed repayment schedule created a financial hardship for him. (Request for Hearing.) To support this claim, Petitioner provided a summary of income and expenses. (Monthly Income / Expenses ("Expense Sheet.)) The Expense Sheet shows a monthly income of \$3,800.00 from Credit Suisse and monthly expenditures of \$3,502.95, leaving \$297.05 after all expenses.

On September 27, 2012, this Court issued a Notice of Docketing, wherein, it ordered both the Secretary and the Petitioner to file documentary evidence. On October 19, 2012, the Secretary filed, among other documents, a Statement That Petitioner's Debt was past due, a statement from the HUD Asset Recovery Division, and a copy of Petitioner's Credit Suisse Pay Statement. (Sec'y Stat; Ex. C, Sautter Decl; Pay Statement ("Pay Stat.))

The Petitioner's Pay Statement showed net bi-weekly pay was \$2,916.67. (Pay Stat.) The Asset Recovery Division determined Petitioner's disposable bi-weekly pay was \$2250.42, after allowable deductions. (Sec'y Stat. ¶ 9; Ex. C, Sautter Decl. ¶ 9.)

The Secretary recommended a bi-weekly garnishment of \$337.56.¹ (Sec'y Stat. ¶ 9; Ex. C, Sautter Decl. ¶¶ 9-10.) Additionally, the Secretary indicated Petitioner's employer had a copy of the wage garnishment calculations issued by the Treasury. (Sec'y Stat. ¶ 11; Ex. C, Sautter Decl. ¶ 11.)

The Declaration from the HUD asset recovery division indicates Petitioner is indebted to HUD as follows:

- a) \$24,679.62 as the unpaid principal balance as of September 30, 2012;
- b) \$742.22 as the unpaid interest on principal at 1% per annum through September 30, 2012;
- c) \$1,548.30 as unpaid administrative costs and penalties, as of September 30, 2012; and
- d) Interest on principal balance from October 1, 2012 at 1% per annum until paid.

(Sec'y Stat., ¶ 4; Ex. C, Sautter Decl. ¶ 4.)

¹ Petitioner's wages were incorrectly garnished twice in the amount of \$368.16, but the difference was refunded to him. (Sec'y Stat. ¶¶ 8, 10.)

On November 28, 2012, this Court again ordered the Parties to file documentary evidence. The deadline to file was December 21, 2012. (Order for Documentary Evidence (“Order for Doc. Evid.”) The record indicates Petitioner provided the original Expense Sheet filed with the Request for Hearing. No further documentation from Petitioner appears in the record.

Discussion

Neither the existence nor the amount of the debt owed to HUD is in contention. Instead, Petitioner claims the proposed wage garnishment schedule would create financial hardship. In some circumstances, “financial hardship” is a valid reason for this Court to reduce the Secretary’s proposed wage garnishment schedule to a more manageable amount for the Petitioner. 31 C.F.R. § 285.11(k). In those cases, Petitioners must present evidence that shows their existing financial obligations are material, and due to these material financial obligations, the proposed wage garnishment schedule would create a financial hardship. Id.

The Petitioner did not contest the opportunity to negotiate a repayment agreement previous to wage garnishment proceedings, and proper notice was sent to him on July 27, 2012. (Sautter Decl. ¶ 6.) Therefore, this Court finds that the Petitioner had the opportunity to negotiate a repayment agreement, as required by § 285.11(e). The Parties never reached an agreement, and shortly after Petitioner’s wages were garnished, in September 2012, Petitioner requested that this Court determine whether the Secretary’s wage garnishment schedule was appropriate. However, the Petitioner’s financial hardship claim is only supported by the initial Expense Sheet filed with the Request for Hearing.

The Petitioner stated a monthly salary of \$3,800. (Expense Sheet.) This conflicts with the amount on Petitioner’s Pay Statement. The bi-weekly pay on the Pay Statement was \$2,916.67, or \$5833.34 monthly. (Pay Stat.) The Secretary and the Asset Recovery Division reviewed a copy of Petitioner’s Pay Statement and determined Petitioner’s bi-weekly disposable income was \$2,250.42, or \$4,500.84 monthly.² (Sec’y Stat. ¶ 9; Sautter Decl. ¶ 9; Pay Stat.)

The Pay Statement appears to be a reliable statement of earnings, and we reference it as an indication of the Petitioner’s monthly income. Therefore, we agree with the Secretary. Petitioner’s monthly disposable income was \$4,500.84. Because the Secretary was authorized to garnish wages “up to 15% of ... disposable pay,” 31 C.F.R. § 285.11(i)(4), the maximum allowable garnishment in Petitioner’s case was \$337.56, each bi-weekly pay period.

This Court finds that Petitioner’s evidence does not support a financial hardship claim. Petitioner provided the Court with the one document itemizing monthly expenses. (Expense Sheet.) The Expense Sheet shows both discretionary and non-discretionary expenses. Even considering all Petitioner’s expenses, including discretionary spending this Court is not required to consider, the financial hardship claim is unsupported by the record.

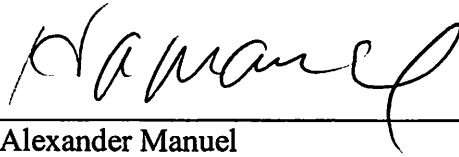
² Disposable income was calculated by subtracting from bi-weekly pay the following: FED WTH, FICA, MEDFICA, NC WTH, Dental BTAX, Vision BTAX, and Medical BTAX. (Sautter Decl. ¶ 9.)

By Petitioner's own account, monthly expenses total \$3,502.95. Add to this amount \$675.13 for monthly wage garnishment, and Petitioner's monthly expenses total roughly \$4,178.08. Subtract this amount from Petitioner's monthly disposable income, \$4,500.84, and Petitioner still has roughly \$322.76 to spare each month. Therefore, this Court finds there was no showing of financial hardship in this case.

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', is written over a horizontal line.

H. Alexander Manuel
Administrative Judge