

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

In the Matter of:

Lee Patton,

Petitioner.

HUDOA No. 12-H-CH-AG94

Claim No. 721006919

October 10, 2012

DECISION AND ORDER

On May 24, 2012, Petitioner requested a hearing concerning 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 the collection of debts owed to the United States government.

APPLICABLE LAW

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. 17.81. The Secretary has the initial burden of proof to show both the existence as well as the amount of the alleged debt. 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 an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. (*Id.*) On May 24, 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") dated May 24, 2012.)

Findings of Fact

On or about October 21, 2002, Petitioner executed a Subordinate Note ("Note") in favor of the Secretary in exchange for foreclosure relief in the form of the Secretary paying the arrearages on Petitioner's mortgage. (Secretary's Statement ("Sec'y Stat.") dated July 23, 2012, ¶ 2.) The amount to be repaid under the Note was \$4,810.98 and the Note became due and payable when the primary note was paid in full; when the maturity date of the primary note has been accelerated; when the primary note is no longer insured by the Secretary; or when the property is no longer occupied by the purchaser as his or her principal residence. (Sec'y Stat. ¶ 3.) On or about December 19, 2003, the Note became payable when the mortgage lender informed HUD that the primary note had been paid in full. (Sec'y Stat. ¶ 4.) HUD alleges accordingly that the Petitioner is indebted to HUD in the following amounts:

- a) \$4,810.98 as the unpaid principal balance as of June 30, 2012;
- b) \$60.15 as the unpaid interest on the principal accruing at a rate of 1% per annum through June 30, 2012;
- c) \$325.19 as the penalties and administrative costs;
- d) Interest on said principal from July 1, 2012 accruing at a rate of 1% per annum until the debt is paid in full.

(Sec'y Stat. ¶ 8.)

A Notice of Intent to Initiate Administrative Wage Garnishment, dated March 19, 2012 was mailed to Petitioner in accordance with 31 C.F.R. 285.11(e). (*Id.* at ¶ 7.) Petitioner was afforded the opportunity to enter into a written repayment agreement as is required by 31 C.F.R. 285.11 (e)(2)(ii), but to date Petitioner has not entered into a written repayment agreement. (Sec'y Stat. ¶ 7.)

Petitioner provided a copy of his weekly pay statement for the pay period ending July 11, 2012. (Sec'y Stat. ¶ 9.) Based upon Petitioner's pay stub, the Secretary's proposes a repayment schedule of \$100.71 weekly or 15 % of the Petitioner's disposable income as allowed by 31 C.F.R. 285.11 (i)(2)(A). (Sec'y Stat. ¶ 10.)

Discussion

Pursuant to 31 C.F.R. 285.11 (f)(8)(ii), Petitioner may "present by a preponderance of the evidence that all or part of the alleged debt is unenforceable or not past due." Here, Petitioner contends that the "I don't know what the debt is for. I did not receive any paperwork. I received this paperwork on May 4, 2012." (Petitioner's Hearing Request, filed May 24, 2012). Petitioner has failed, however, to file documentary evidence in support of his position despite being ordered by the Court on three occasions to do so (Notice of Docketing; Order for Documentary Evidence, dated August 9, 2012; Order to Show Cause, August 30, 2012.)

The Secretary contends, on the other hand, that "Petitioner remains delinquent," and that Petitioner's alleged debt is "legally enforceable." The Secretary concludes that payment of the primary Note triggered the payment date of the Subordinate Note." (Sec'y Stat., ¶ 4, Ex B, ¶ 4.) The Secretary submitted, as support, a copy of the partial claims promissory note signed by Petitioner in which Petitioner agreed to pay the alleged debt when "The Borrower [Petitioner] has paid in full amounts due under the primary Note and related mortgage,...." (Sec'y Stat., Ex. A, ¶ 4(A)(i)).

This Office has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable." *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Without sufficient evidence from Petitioner to

rebut the evidence presented by the Secretary, the Court finds that Petitioner has failed to meet his burden of proof and, as a result, Petitioner's claim fails for want of proof.

As a final point, Rule 26.4(d) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party.*

(Emphasis added).

Accordingly, I find that, pursuant to Rule 26.4(d), Petitioner's non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

ORDER

Based on the foregoing, 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.



Vanessa L. Hall
Administrative Judge