

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

In the Matter of:

William Tew,

Petitioner

HUDOA No.: 12-H-NY-AG111

Claim No. 780688476

October 16, 2012

DECISION AND ORDER

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

APPLICABLE LAW

The administrative judges of this Court 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(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 July 25, 2012 this Court 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")).

Findings of Fact

On March 23, 2003, Petitioner executed and delivered a Retail Installment Contract and Security Agreement ("Note") to HWH Mobile Home Inc. dba Magic City Mobile Homes in the amount of \$21,500.00, which was insured against nonpayment by the secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y Stat.") ¶2, Ex. A, dated August 2, 2012; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl.") ¶ 3, dated July 31, 2012.) Contemporaneously, on March 23, 2003, the Note was assigned by HWH Mobile Home Inc. dba Magic City Mobile Homes to 21st Mortgage Corp. (Sec'y Stat. ¶3, Ex. A) Petitioner failed to make a payment on the Note as agreed. Consequently, in accordance with 24 C.F.R. §201.54, on November 3, 2006, 21st Mortgage Corp. assigned the Note to the United States of America. HUD is the holder of the Note on behalf of the United States. (Sec'y Stat. ¶4, Ex. B.) HUD has made

efforts to collect this debt from Petitioner, but has been unsuccessful. As a result, Petitioner remains in default on the Note. HUD thereby alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$6,588.49 as the unpaid principal balance as of July 31, 2012;
- b) \$2,045.03 as the unpaid interest on the principal balance at 4% per annum through July 31, 2012;
- c) \$2,550.43 as the unpaid penalties and administrative costs as of July 31, 2012; and
- d) interest on said principal balance from August 1, 2012 at 4% per annum until paid.

(Sec'y Stat. ¶5; Dillon Decl. ¶4.)

A Notice of Intent to Initiate Administrative Wage Garnishment, dated June 22, 2012, was mailed to Petitioner in accordance with 31 C.F.R. § 285.11(e). (Sec'y Stat. ¶6; Dillon Decl. ¶5.) Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec'y Stat. ¶7; Dillon Decl. ¶6.) As of July 31, 2012, Petitioner has not entered into a written repayment agreement. (Sec'y Stat. ¶7; Dillon Decl. ¶6.)

HUD has made several unsuccessful attempts to obtain a current pay stub from Petitioner. Therefore, the Secretary's proposed repayment schedule is \$310.05 per month, which would liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay. (Sec'y Stat. ¶8; Dillon Decl. ¶7.)

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." In this case, Petitioner does not dispute the existence or the amount of the debt but rather contends that "the terms of the proposed garnishment should be changed" because "Petitioner is unable to afford the requested payment of \$270 per month." (Pet'r's Hr'g Req., filed July 24, 2012.) However, the record does not reflect that Petitioner filed documentary evidence in support of his position despite being ordered twice by the Court to do so. (Notice of Docketing 2; Order to Petitioner, dated August 30, 2012.)

The Secretary contends, on the other hand, that Petitioner has "failed to present a current pay stub indicating that he is unable to afford the requested payment of \$270 per month." (Sec'y Stat. ¶8; Dillon Decl. ¶7.) As a result, the Secretary is unable to calculate 15% of Petitioner's disposable pay to adjust the garnishment accurately and instead has opted to calculate Petitioner's wage garnishment amount as recommended by the Federal Claims Collection Standards. (Sec'y Stat. ¶8; Dillon Decl. ¶7.) In addition, the Secretary introduced into evidence a copy of the agreement signed by Petitioner that shows he remains legally obligated to pay the alleged debt unless Petitioner can prove that he has been released from his legal obligation.

This Court 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 evidence from Petitioner to support his claim, I find that 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.

A handwritten signature in black ink, appearing to read 'V. Hall', is written over a horizontal line.

Vanessa L. Hall
Administrative Judge