

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

In the Matter of:

Glen Mossman,

Petitioner.

HUDOA No. 12-M-CH-AG103

Claim No. 721007005

October 16, 2012

DECISION AND ORDER

On July 6, 2012, Petitioner Glen Mossman ("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" or "the Government"). 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 federal government.

The Secretary of HUD has designated the administrative judges of this Office to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This case is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. HUD has not yet issued a wage garnishment order to Petitioner's employer. Accordingly, pursuant to 31 C.F.R. § 285.11(f)(10)(ii), the issuance of such an order is stayed until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral ("Notice of Docketing"), issued July 10, 2012.)

Background

On or about January 10, 2003, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note" or "Subordinate Note") in the amount of \$8,794.87. (Secretary's Statement ("Sec'y Stat.") ¶ 2, filed July 17, 2012; Ex. A, Note.) In exchange, HUD advanced funds to Petitioner's lender to bring the primary mortgage current on Petitioner's home, thereby avoiding foreclosure. (Sec'y Stat., ¶ 2; Ex. B, Declaration of Brian Dillon¹, ("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, ¶ 3(A)(i); Dillon Decl., ¶ 4)

¹ Dillon is the Director of the Asset Recovery Division of HUD's Financial Operations Center.

On or about March 30, 2004, HUD terminated the FHA insurance on the primary mortgage when the primary lender notified the Secretary that the mortgage had been 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) \$8,794.87 as the unpaid principal balance as of June 30, 2012;
- b) \$109.95 as the unpaid interest on the principal balance at 1.0% per annum through June 30, 2012;
- c) \$565.22 as the unpaid penalty and administrative costs through June 30, 2012; and
- d) interest on said principal balance from July 1, 2012, at 1.0% per annum until paid.

(Dillon Decl. ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Garnishment Notice"), dated May 25, 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.)

The Secretary proposes a repayment schedule of either 15% of Petitioner's disposable monthly income, or \$263.00 per month, which will liquidate the debt in approximately three years. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 8.)

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 contends that the alleged debt was paid in full when he refinanced the mortgage on the home. Petitioner's Hearing Request, p. 1. However, as the Secretary notes, he has provided no documentary evidence substantiating this claim. See Sec'y Stat., ¶ 11.

The Notice of Docketing ordered Petitioner to file, "on or before August 23, 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 did not file any information by that date. As a result, the Court issued an Order on September 10 instructing Petitioner to file his evidence "on or before September 30, 2012." Order for Documentary Evidence ("Order"), issued September 10, 2012 (emphasis in original). The Order informed Petitioner that:

"[F]ailure to comply with this Order may result in the imposition of sanctions that may include 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 did not respond to the Order. To date, Petitioner has not filed any documentary evidence supporting his claim that the subject debt was paid as part of the refinance of Petitioner's mortgage. 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.

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