

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

In the Matter of:

ALAN J. MENCHER,

Petitioner

HUDOA No.: 12-M-CH-AWG66

Claim No.: 721007206

Date: October 16, 2012

DECISION AND ORDER

On March 14, 2012, Alan J. Mencher ("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 the collection of debts owed to the United States government.

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 March 22, 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, dated March 22, 2012.)

Background

On September 12, 2001, Petitioner executed a Subordinate Note ("Note") in favor of the Secretary in exchange for foreclosure relief. (Secretary's Statement ("Sec'y Stat.") ¶1, dated March 26, 2012.) The original amount to be repaid under the Note was \$19,588.75 and the Note was to become due and payable upon payment in full of the primary note. (Id. ¶ 2.)

On or about June 30, 2006, the FHA mortgage insurance on the original Note was terminated due to the mortgagee indicating that the mortgage was paid in full. (Id. ¶3.) This event rendered the Note due and payable. (Id. ¶ 4.) Petitioner failed to make any payments on the Note. (Sec'y Stat. ¶ 5.) The Secretary has unsuccessfully attempted to collect the debt from

the Petitioner and as such the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$17,488.50¹ as the unpaid principal balance as of February 29, 2012; and
- b) Interest on said principal balance from March 1, 2012 accruing at a rate of 1% per annum until the principle is paid in full.

(Sec'y Stat. ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated February 12, 2012, was mailed to Petitioner in accordance with 31 C.F.R. 285.11(e). (Sec'y Stat. ¶ 7.) In that *Notice*, Petitioner was granted an offer to enter into a written repayment agreement, as is required by 31 C.F.R. 285.11 (e)(2)(ii), but the Petitioner has, at this point, not entered into a repayment agreement with HUD. (Sec'y Stat. ¶ 8.) At the time that the *Secretary's Statement* was issued, HUD had been unable to secure any verification of Petitioner's income level. (Sec'y Stat. ¶ 10.) In light of this, the Secretary proposes a repayment schedule of \$485.79 monthly or 15% of Petitioner's disposable monthly income as allowed by 31 C.F.R. 285.11 (i)(2)(A). (*Id.*)

Discussion

In his *Hearing Request*, Petitioner appeared to question the validity of the debt in this case. In his response to the *Order for Documentary Evidence* Petitioner argues that the imposition of the repayment schedule proposed by the Secretary would inflict upon him a severe financial hardship. Beyond this, Petitioner also makes several requests of this Court. Petitioner asks that: (1) His debt be forgiven; (2) collection proceedings be stalled; or (3) that he be given the opportunity to reduce the amount of his debt through settlement negotiation.

This Office does not have the authority to grant the type of relief that Petitioner is seeks. The forgiveness of his debt or the delaying of collection procedures is not within the purview of these proceedings. In regards to settlement through negotiation, this Office is also not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may wish to discuss this matter with counsel for the Secretary or Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

Petitioner's claim of financial hardship is within the purview of these proceedings and can be addressed pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), which provides that Petitioner "may present evidence that the terms of the repayment schedule...would cause a financial hardship...."

¹ The Court notes that in his *Hearing Request* Petitioner contested the difference between the \$17,488.50 amount that the Secretary alleges is owed, the \$19,588.75 which was originally due under the Note, and the \$3,446 Federal tax refund that was seized by the Secretary and applied to the debt. This Office issued an *Order for Documentary Evidence* where the Secretary was directed to provide documentary evidence explaining this discrepancy in the amounts seized and amounts owed. In the *Supplemental Statement* issued by the Secretary it was explained that of the \$3,446 seized from Plaintiff's Federal tax refund, \$2,100.19 was applied to the principal, \$114.24 was applied to interest, \$1,214.57 was applied to penalties, and that \$17.00 was applied to "other" charges thereby accounting for the discrepancy.

To support his claim of financial hardship, Petitioner provided this Office with a copy of his pay statement for the pay period between February 27 and March 11 of 2012. (Pet'r Hr'g Req., attachs.)

According to 31 C.F.R. §§ 285.11 (i)(2)(i)(A), the Secretary is authorized to garnish "up to 15% of the debtor's disposable pay." Petitioner's pay statement reflects that Petitioner's monthly disposable pay after allowable deductions for Social Security, Medicare, and Federal Tax is \$5,143.91. (*Id.*) Petitioner also provided financial records cataloguing his alleged monthly expenses which included: alimony/child support, \$1,928.33; rent, \$1,900; electricity, \$65.11; gas, \$33.49; car insurance, \$129.83, telephone, \$146.30; water, \$20.92; and gasoline, \$390.17. (*Id.*) The AT&T cable and internet bill has not been deemed a necessary living expense by this Office and is excluded as a living expense for the purposes of these proceedings.

Petitioner also listed a monthly expense for food for which there was no documentary evidence provided. Without such documentary evidence expenses usually would not be included, however this Office has determined that credit may be given for essential household expenses, such as rent and food, where Petitioner did not provide bills or other documentation, yet the "financial information submitted by Petitioner...[was found to be] generally credible..." Elva and Gilbert Loera, HUDCA No. 09-A-CH-AWG28 (July 20, 2004). In accordance with the holding in Loera, this Office will give Petitioner credit for a monthly food expense in the amount of \$322.

Petitioner's monthly household expenses when totaled amount to \$4,936.16. When subtracted from his disposable income this leaves a remainder of \$207.75 per month. As stated above, the Secretary is authorized by statute to garnish up to 15% of a debtor's wages which, for Petitioner, would be \$775.58. In the instant case according to the *Secretary's Statement* the Secretary seeks a repayment schedule of \$485.79 or 15% of Petitioner's disposable income. Both figures if garnished in conjunction with his household expenses would comprise amounts that would exceed Petitioner's monthly disposable pay by \$567.83 and \$278.04 respectively. Pursuant to 31 C.F.R. § 285.11 (k)(3), this Office is authorized to order garnishment at a lesser rate based upon the record placed before it, particularly in instances where financial hardship is found. In the instant case, however, even a much reduced garnishment of 5% would amount to \$257.19 and added to Petitioner's household expenses would total an amount which would also exceed Petitioner's disposable pay. I therefore find that Petitioner has demonstrated that the Secretary's proposed repayment schedule would cause Petitioner financial hardship. I further find, however, that Petitioner is indebted to HUD in the amounts claimed by the Secretary and that the debt may be legally enforced against Petitioner in the amounts claimed by the Secretary.

ORDER

Accordingly, it is

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment because of Petitioner's financial circumstances at this time. It is

FURTHER ORDERED that the Stay of Referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment imposed on the Department on March 22, 2012, SHALL REMAIN IN PLACE, INDEFINITELY.

The Secretary shall not be prejudiced from seeking administrative wage garnishment for the debt in this case in the future, if, and when, Petitioner's financial circumstances warrant enforcement of the debt at that time.



H. Alexander Manuel
Administrative Judge