

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

In the Matter of:

Jeffery L. Ray,

Petitioner.

HUDOHA 12-VH-CH-AG-125
Claim No. 780691413

December 26, 2012

DECISION AND ORDER

On September 6, 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 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, 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.*)

Procedural Background

On September 6, 2012, the 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"). In response to the Notice of Docketing, the Secretary's Statement was filed on October 4, 2012. To date, Petitioner has failed to submit, in response to Court orders, documentary evidence in support of his position. (Notice of Docketing; Order for Documentary Evidence, dated October 22, 2012; Order for Documentary Evidence, November 28, 2012.) This case is now ripe for review.

Findings of Fact

On March 16, 1996, Petitioner executed a Note ("Note") to Vanderbilt Mortgage & Finance, Inc. in the amount of \$41,682.95 for a manufactured home loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. Sec. 1703. (Secretary's Statement ("Sec'y Stat.") ¶1, dated October 4, 2012; Ex. A, Note.) Petitioner failed to make payments as agreed in the Note. Consequently, Vanderbilt Mortgage & Finance, Inc. assigned the Note to the United States of America under the regulations governing the Title Insurance Program. (Sec'y. Stat., ¶ 2; Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), ¶ 3, dated September 14, 2012.) HUD has attempted to collect his debt but has been unsuccessful. (Sec'y Stat. ¶ 3; Dillon Decl. ¶4.) HUD thereby alleges that the Petitioner is indebted to HUD in the following amounts:

- a) \$20,119.81 as the unpaid principal balance as of August 30, 2012;
- b) \$1,188.51 as the unpaid interest on the principal balance accruing at a rate of 4.0% per annum through August 30, 2012;
- c) \$896.65 as the unpaid penalties and administrative cost through August 30, 2012; and,
- d) Interest on said principal balance from September 1, 2012 at 4.0% per annum until paid.

(Sec'y Stat. ¶ 3; Dillon Decl. ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment, dated September 27, 2010 was mailed to Petitioner in accordance with 31 C.F.R. 285.11(e). (Sec'y. Stat. ¶ 5; Dillon Decl. ¶ 6.) Petitioner was afforded the opportunity to enter into a written repayment agreement as required by 31 C.F.R. 285.11 (e) (2) (ii), but Petitioner did not enter into a repayment agreement in response to the September 27, 2010 Notice. (Sec'y. Stat., Ex. B, Dillon Decl. ¶ 7.)

A Wage Garnishment Order was issued to Petitioner's employer on October 28, 2010. (Sec'y. Stat., Ex. B, Dillon Decl. ¶ 7.) Based on the issuance of the wage garnishment order, Petitioner's pay has been garnished sixty-five times for a total of \$2,707.55 or an average of \$41.65 per week. Petitioner's pay was garnished on August 29, 2012 in the amount of \$96.73 and September 7, 2012 in the amount of \$56.09. (Sec'y. Stat., Ex. B, Dillon Decl., ¶ 9.) These payments are not yet reflected in paragraph 5 above as the Department of the Treasury has not remitted the payment.

An attempt was made to obtain Petitioner's current pay stub, but without success. (*Id.*, ¶10.) The Secretary proposed repayment schedule is 15 percent of the Petitioner's disposable income as allowed by 31 C.F.R. 285.11(i) (2) (A). (Sec'y Stat. ¶ 6; Dillon Decl. ¶ 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; or that the terms of the proposed garnishment amount would cause financial hardship; or that collection of the debt may not be pursued due to operation of law.”

In this case, Petitioner claims that he does not owe the alleged debt because it does not exist. (Petitioner’s Hearing Request, “Pet’r’s Hr’g. Req.,” filed September 6, 2012.) Petitioner further states that he “filed bankruptcy before this occurred.” (*Id.*) As support, Petitioner submitted a copy of a comprehensive report in which it reflects that Petitioner filed for a Chapter 13 bankruptcy on August 16, 2005, with a disposition date of June 15, 2006. (*Id.*, Attachment.)

The Secretary states, on the other hand, that while Petitioner “filed a Chapter 13 bankruptcy on August 16, 2005,” it was “dismissed on June 15, 2006.” (Sec’y. Stat., ¶ 4; Ex. B, Dillon Decl., ¶ 5.) After reviewing the record Petitioner himself provided the evidence that verified the dismissal of the Chapter 13 bankruptcy on the June 15, 2006, as claimed by the Secretary. (Pet’r’s Hr’g. Req., Attachment.) As a result, the bankruptcy claim that Petitioner relied upon by Petitioner is no longer valid against the collection of the alleged debt.

Because Petitioner has failed to successfully meet his burden of proof that the alleged debt does not exist or is not owed, he remains legally obligated to pay the debt that is the subject of this proceeding. 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)). Based upon the evidence presented by Petitioner, I find that his claim fails for want of proof.

ORDER

Based upon 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 at 15 percent of the Petitioner’s disposable income as allowed by 31 C.F.R. 285.11(i)(2)(A).

/o/ original signature

Vanessa L. Hall

Administrative Judge