

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

In the Matter of:

Alfredo Zuniga,

Petitioner

HUDOA No.: 12-H-CH-AG72

Claim No. 780734445

August 15, 2012

DECISION AND ORDER

On April 5, 2012, 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”). 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.

By regulation, the administrative judges of this Court are authorized to conduct hearings to determine whether disputed debts are past due and legally enforceable. 24 C.F.R. § 17.81(b); 24 C.F.R. Part 26, subpart A. The 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(a). The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of the 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 April 5, 2012, pursuant to 31 C.F.R. § 285.11(f)(4), this Court stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated April 5, 2012.)

In response to the Notice of Docketing, the Secretary filed a Statement, along with documentary evidence on April 23, 2012. Petitioner failed, however, to respond to the Orders issued by this Court on May 22, 2012 and June 19, 2012, in which Petitioner was ordered to file documentary evidence in support of his position. The record is now ripe for review by this Court.

Background

On December 20, 2008, Petitioner executed a Manufactured Home Retail Installment Contract and Disclosure Statement (“Note”) under the provisions of the Title I Insurance Program. (Secretary’s Statement (“Sec’y Stat.”), ¶ 1, filed April 23, 2012; Ex. 1, Note.) Pursuant to the provisions of the Title I Insurance Program, the Note was assigned to the HUD Secretary after Petitioner defaulted on the Note. (Sec’y Stat., ¶ 2; Ex. 2, Declaration of Gary Sautter, Acting Director, Asset Recovery Division, Financial Operations Center of HUD, (“Sautter Decl.”), dated April 11, 2012, ¶ 3.)

The Secretary claims that HUD has attempted to collect the alleged debt from Petitioner, but that these attempts have been unsuccessful. (Sec’y Stat., ¶ 3; Sautter Decl. ¶ 4.) As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$7,286.20 as the unpaid principal balance as of March 31, 2012;
- (b) \$757.89 as the unpaid interest on the principal balance at 1.0% per annum through March 31, 2012;
- (c) \$368.17 as the unpaid penalties and administrative costs through March 31, 2012;
- (d) interest on said principal balance from March 31, 2012 at 1.0% per annum until paid.

(Sec’y Stat., ¶ 4; Sautter Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated December 6, 2011, was sent to Petitioner. (Sec’y Stat., ¶ 5; Sautter Decl., ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec’y Stat., ¶ 6; Sautter Decl., ¶ 6.) To date, Petitioner has not entered into such an agreement. (Sec’y Stat., ¶ 6; Sautter Decl. ¶ 6.) A Wage Garnishment Order was issued to Petitioner’s employer on January 11, 2012. (Sec’y Stat., ¶ 7; Sautter Decl., ¶ 8.) To date, Petitioner’s wages have been garnished a total of five times. (Sec’y Stat., ¶ 8; Sautter Decl., ¶ 9.)

While Petitioner has stated that he surrendered his mobile home, the Secretary maintains that HUD has still incurred a loss, by pointing to the the appraised value of the mobile home being \$27,333.00, the best price at sale being \$16,000.00, and the unpaid balance upon the date of Petitioner’s surrender being \$32,802.00. (Sec’y Stat., ¶ 13; Sautter Decl., ¶ 11; Exhibits A, B, and C, Government’s Documentary Evidence, (“Gov’t’s Doc. Evid.”).) Petitioner’s income has not been established, but the Secretary alleges that 15% of Petitioner’s disposable income is the appropriate amount to garnish. (Sec’y Stat., ¶ 11; Dillon Decl., ¶ 10.)

Discussion

In this case, Petitioner asserts, in general, that: 1) he does not owe the alleged debt because he surrendered possession of his mobile home; and, 2) If he was legally obligated to pay the alleged debt, the terms of repayment would create a financial hardship. (Petitioner’s Hearing

Request (“Hr’g Req.”), received April 5, 2012.) Petitioner more specifically states, “I returned the mobil [sic] home because I’ve face [sic] personal hardship, and I could’nt [sic] keep up with payments.” (*Id.*) Petitioner did not, however, produce any evidence in support of his argument for the Court to review, despite being ordered on three occasions to do so. (Notice of Docketing, April 5, 2012; Order for Documentary Evidence, May 22, 2012; Order to Show Cause, June 19, 2012).

On the other hand, the Secretary has successfully met his burden of proof by establishing not only that the alleged debt is past due, but also by establishing that the debt is enforceable against Petitioner. Without evidence presented by Petitioner to refute or rebut the evidence presented by the Secretary, I find that Petitioner has failed to meet his burden of proof and remains legally obligated to pay the alleged in the amount claimed by the Secretary. 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)). Accordingly, I find that Petitioner’s claim fails for lack of proof.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding is enforceable against Petitioner in the amount claimed by the Secretary.

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 in 15 percent of Petitioner’s disposable income.

/o/ original signature _____
Vanessa L. Hall
Administrative Judge