

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

In the Matter of:

ALPHONSO PERRY,

Petitioner

HUDOHA No. 13-AM-003-AG-2

Claim No. 721007123

February 1, 2013

DECISION AND ORDER

On October 3, 2012, Alphonso Perry ("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. § 17.81. HUD has not yet issued a wage garnishment order to Petitioner's employer. Accordingly, pursuant to 31 C.F.R. § 285.11(f)(10)(i), 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 October 9, 2012.)

Background

On March 14, 2006, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note" or "Subordinate Note") in the amount of \$3,054.45. (Secretary's Statement ("Sec'y Stat."), ¶ 4, filed October 19, 2012; Ex. B, Note.) In exchange, HUD advanced funds to Petitioner's lender to bring the primary home mortgage current on Petitioner's home, thereby avoiding foreclosure. (Sec'y Stat., ¶ 2-3; Ex. A, Declaration of Gary Sautter¹, ("Sautter 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., ¶ 5; Note, ¶ 4(A)(i); Sautter Decl., ¶ 4.)

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

On or about March 1, 2011, 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., ¶ 6; Sautter 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) \$3,054.45 as the unpaid principal balance as of September 30, 2012;
- b) \$40.64 as the unpaid interest on the principal balance at 1% per annum through September 30, 2012;
- c) \$471.38 as the unpaid penalties and administrative cost as of September 30, 2012; and
- d) interest on said principal balance from October 1, 2012 at 1% per annum until paid.

(Sec'y Stat., ¶ 9; Sautter Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Garnishment Notice"), dated August 2, 2012, was mailed to Petitioner, in accordance with 31 C.F.R. 285.11(e). Id. at ¶ 6-7. 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. at ¶ 7. The record does not show that Petitioner has entered into such an agreement. (See Sautter Decl., ¶ 7.)

The Secretary proposes a repayment schedule of either 15% of Petitioner's disposable monthly income, or \$98.55 per month. (Sec'y Stat., ¶ 16; Sautter Decl., ¶ 10.)

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, 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 debt in this case, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note and the sworn testimony of the Acting Director of HUD's Asset Recovery Division. (See Sec'y Stat; Ex. A; Ex. B.) Accordingly, I find that the Secretary has met his burden of proof.

Petitioner contends that he does not owe a debt to HUD because Petitioner has not lived in, or done any business with, a "HUD development." (Pet'r's Hr'g Req., p. 1.) However, as

the Secretary notes, Petitioner's debt to HUD does not arise as a result of his status as a resident of a HUD development. Instead the debt arose because Petitioner, while the owner of 2381 NW 99th Terrace, Miami, Florida, borrowed money from HUD and executed a note payable to HUD in March 2006. (Sec'y Stat., ¶ 2, 14; See Ex. B.) Petitioner admits that he lived at the subject address, but claims he lived there only until 2005. (Pet'r's Hr'g Req., p. 5.) However, Petitioner's driving license, which was issued in 2008, lists 2381 NW 99th Terrace, Miami, Florida as Petitioner's place of residency. (Ex. C.) In any case, the Government has come forward with ample evidence that the debt in this case is owed by him to HUD, including a copy of the Note containing the signature of Alphonso Perry, and listing the address of 2381 NW 99th Terrace, Miami, FL 33147. The burden therefore shifts to Petitioner to prove that he does not owe the debt or that the debt is not enforceable.

The Notice of Docketing ordered Petitioner to file, "on or before November 19, 2012," any documentary evidence proving that he did not owe all or part of the alleged debt. Notice of Docketing, p. 2 (emphasis in original). Petitioner did not file any information by that date. As a result, the Court issued an Order on December 12, 2012 instructing Petitioner to file his evidence "on or before January 4, 2013." (Order for Documentary Evidence ("Order"), issued December 12, 2012) (emphasis original). The Order informed Petitioner that:

"Failure to comply with this Order may result in the imposition of sanctions that may include the 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 failed to comply with this Order. To date, Petitioner has not filed any documentary evidence supporting his claim that he does not owe a debt to HUD and therefore has 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

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by the law.

_____ original signed _____
H. Alexander Manuel
Administrative Judge