

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

In the Matter of:

**Anthony D. Myers,**

Petitioner.

HUDOA No.: 13-AM-005-AG-4

Claim No. 7807262840A

January 9, 2013

**DECISION AND ORDER**

On October 9, 2012, Anthony D. Myers ("Petitioner") requested a hearing concerning the existence, amount or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). The Debt Collection Improvement Act of 1996 authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of nontax debts owed to the United States Government. 31 U.S.C. § 3720D.

The HUD Secretary has designated the administrative judges of this Office to conduct a hearing to determine whether the disputed debt is past due and legally enforceable. 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.

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 must then 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).

Pursuant to 31 C.F.R. § 285.11(f)(4), on October 10, 2012, this Office 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 Oct. 10, 2012.)

**Background**

On March 7, 2002, Petitioner executed and delivered a Retail Installment Contract-Security Agreement ("Note") to Clayton Mt. Airy in the amount of \$25,679.95, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat. ¶ 2; Ex. A, Note.) Contemporaneously, on March 7, 2002, the Note was assigned by Clayton Mt. Airy to Vanderbilt Mortgage and Finance, Inc. (Sec'y Stat. ¶ 3; Ex. A, at 1 & 4.)

Petitioner failed to make payment on the Note as agreed. (Sec'y Stat. ¶ 4.) Consequently, in accordance with 24 C.F.R. § 201.54, Vanderbilt Mortgage and Finance, Inc. assigned the Note to the United States of America. (*Id.*) The Secretary of HUD is the holder of the Note on behalf of the United States of America (*Id.*)

Consequently, in accordance with 24 C.F.R. § 201.54, the Resolution Trust Corporation, as receiver of American Savings & Loan Association, assigned the Note to the United States of America. (Sec'y Stat. ¶ 4; Dillon Decl. ¶ 3.) The Secretary is the holder of the Note on behalf of the United States. (Sec'y Stat. ¶ 4, Ex. A, at 3.)

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. (Sec'y Stat. ¶ 5; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl.") ¶ 4, dated Oct. 23, 2012.) As a result, Petitioner remains in default on the Note. (Sec'y Stat. ¶ 5; Dillon Decl. ¶ 4.) The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$17,086.93 as the unpaid principal balance as of October 9, 2012;
- (b) \$0 as the unpaid interest on the principal balance at 1% per annum through October 9, 2012; and
- (c) interest on said principal balance from October 10, 2012 at 1% per annum until paid.

(Sec'y Stat. ¶ 5; Dillon Decl. ¶ 4.)

Pursuant to 31 C.F.R. § 285.11 (e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated June 12, 2012, was sent to Petitioner. (Sec'y Stat., ¶ 6; Dillon 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 mutually agreeable terms. (Sec'y Stat. ¶ 7.) Petitioner did not enter into a repayment agreement or pay the debt in full based on the Notice. (*Id.*) Consequently, on July 16, 2012, a Wage Garnishment Order was issued to Petitioner's employer. (Sec'y Stat. ¶ 8; Dillon Decl. ¶ 7.) Based on the issuance of the Wage Garnishment Order, HUD has received eight garnishments, which are reflected in the outstanding balance shown above. (Sec'y Stat. ¶ 9; Dillon Decl. ¶ 8.)

The Secretary has considered Petitioner's current financial situation and agrees to reduce the wage garnishment to \$25.00 weekly. In accordance with an agreement between HUD and Petitioner, the Secretary proposes a repayment schedule of \$25.00 weekly. (Sec'y Stat. ¶ 10; Dillon Decl. ¶ 9.)

### **Discussion**

The Secretary bears the initial burden of proof to show 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 no debt exists, the amount of the debt is incorrect or unenforceable, or that the terms of the proposed repayment schedule would cause financial hardship. 31 C.F.R. § 285.11(f)(8)(ii).

As evidence of the existence and amount of the debt, 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 therefore find that the Secretary has met his initial burden of proof.

Petitioner does not dispute the existence of the debt. Rather, Petitioner claims that repayment of this debt would cause him financial hardship. Specifically, Petitioner states that "this is causing me to lose or get behind with everything I got. I have enclosed my portion of my bills." (Pet'r's Hr'g Req., filed Oct. 9, 2012.) However, since the filing of his hearing request, Petitioner has signed an agreement authorizing HUD to garnish his wages in the amount of \$25.00 weekly until the debt is repaid. (Dillon Decl., Ex. A.) As the only issue in dispute has been settled, Petitioner's appeal is **DISMISSED**.

Based on the foregoing, I find that the debt that is the subject of this proceeding is enforceable in the amount alleged by the Secretary. Accordingly, 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 the weekly amount of \$25.00 of Petitioner's disposable income.



Alexander Manuel  
Administrative Judge