

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

In the Matter of:

Mike Lynch,

Petitioner.

HUDOHA No. 13-AM-0052-AG-018

Claim No. 7708867420B

April 1, 2013

DECISION AND ORDER

On November 14, 2012, Petitioner Mike Lynch (“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 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 the 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, Petitioners may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue financial hardship to the petitioners, or that the collection of the debt may not be pursued due to operation of law. Id.

Procedural Background

On November 27, 2012, this Court stayed the issuance of a wage garnishment withholding until the issuance of this decision. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated November 16, 2012. On December 5, 2012, the Secretary filed his statement along with documentation in support of his position. To date, Petitioner has failed to submit documentary evidence in support of his position. The case is now ripe for review.

Background

On or about June 8, 1990, Petitioner executed and delivered a Retail Installment Contract- Security Agreement (“Note”) to Chap FD Inc. in the amount of \$37, 506.50, which

was insured against nonpayment by the Secretary, pursuant to Title 1 of the National Housing Act, 12 U.S.C. Sec. 1703. (Secretary's Statement ("Sec'y Stat.") ¶ 2, filed December 5, 2012; Ex. A, Note.) Contemporaneously, on June 8, 1990, the Note was assigned by Chap FD Inc. to Vanderbilt Mortgage and Finance, Inc. (Sec'y Stat. ¶ 3; Note 1.) Petitioner failed to make payment on the Note as agreed. Consequently, in accordance with C.F.R. Sec. 201.54, on March 22, 1996, Vanderbilt Mortgage and Finance, Inc. assigned the Note to the United States of America. The Secretary is the holder of the Note on behalf of the United States. (Sec'y Stat. ¶ 4; Exhibit B.) The U.S. Department of Justice brought suit against the Petitioner in the U.S. District Court for the District of South Carolina. On June 19, 1998, the United States Attorney's office obtained a judgment against Petitioner in the total amount of \$20,198.01 (Sec'y Stat. ¶ 5; Ex. D, Declaration of Brian Dillon¹ ("Dillon Decl."), ¶ 3.)

The Secretary contends that he has made efforts to collect this debt from Petitioner, but has been unsuccessful. As a result, the Secretary alleges the Petitioner remains in default on the note and is justly indebted to the Secretary in the following amounts:

- (a) \$19,991.37 as the unpaid principal balance as of November 30, 2012;
- (b) \$11,731.57 as the unpaid interest on the principal balance at 5% per annum through November 30, 2012;
- (c) \$206.64 as non-interest bearing principal through November 30, 2012; and
- (d) interest on said principal balance from December 1, 2012 at 5% per annum until paid.

(Sec'y Stat. ¶ 6; Dillon Decl. ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Garnishment Notice") dated August 1, 2012, was sent to Petitioner, in accordance with 31 C.F.R. 285.11(e). (*Id.* at ¶ 5.) The Garnishment Notice afforded the Petitioner the opportunity to enter into a written repayment agreement, as required by 31 C.F.R. 285.11 (e)(2)(ii). To date, Petitioner has not entered into such an agreement. (Sec'y Stat. ¶ 8; Dillon Decl. ¶ 6.)

A Wage Garnishment Order dated November 9, 2012, was issued to Petitioner's employer, and based on that Order, HUD received two garnishment payments totaling \$399.66. These payments were credited towards the Petitioner's debt, and are reflected in the outstanding balance now due above. (Sec'y Stat. ¶ 9, 10; Dillon Decl. ¶ 7, 8.) After a review of Petitioner's last two pay statements, the Secretary states that Petitioner's employer withheld more than 15% of Petitioner's disposable pay. (Sec'y Stat. ¶ 10, 11; Dillon Decl. ¶ 8-11.) Due to the miscalculation, Petitioner is entitled to a refund of \$180.65. The Secretary states that on December 3, 2012, HUD initiated a refund to Petitioner. When Petitioner receives that refund, the outstanding balance due will be adjusted accordingly. (Sec'y Stat. ¶ 12; Dillon Decl. ¶ 12.)

The Secretary proposes a repayment schedule of 15% of Petitioner's disposable pay. (Sec'y Stat. ¶ 13.)

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

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, the Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that the collection of the debt may not be pursued due to operation of law. Id.

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

Petitioner contests the existence of this debt. Specifically, Petitioner claims that:

I was only a co-signer on this loan...Debbie [listed as Buyer on the Note] remained in the house and I was never allowed back in the house or given the opportunity to keep the house... after 19 years, I'm just now being contacted and told I'm responsible for this loan... I own no property or any real estate of any kind... I make \$11.00 per hour and struggle to meet my financial obligations... Debbie is a head nurse making 50+ an hour and owning different properties...I submitted a financial statement and made an offer to sell my '97 ford truck and other small personal items trying to pay a lump sum of [\$]3000.00 to clear this debt but was turned down... I wish to be cleared and not held responsible for this debt.

Petitioner's Hearing Request ("H'rg Req.")

However, Petitioner has provided no documentary evidence substantiating his claims.

The Notice of Docketing ordered Petitioner to file, "on or before December 29, 2012" any documentary evidence proving that he did not owe all or part of the alleged debt. (Notice of Docketing, 2.) Petitioner did not file any information by that date. As a result, the Court issued an Order on January 10, 2013, and another on February 8, 2013, instructing Petitioner to file his evidence "on or before February 6, 2013" and "on or before February 21, 2013," respectively. (Order for Documentary Evidence ("Order"), issued January 10, 2013; Order for Documentary Evidence ("Order 2"), dated February 8, 2013.) Both Orders informed Petitioner that:

"Failure to comply with this Order may result in the imposition of sanctions to 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, dated January 10, 2013, Order 2 dated February 8, 2013.) (emphasis in originals).

Petitioner did not respond to either Order. To date, Petitioner has not filed any documentary evidence supporting his claims that he is not responsible for the debt and that the proposed administrative wage garnishment would create an undue financial hardship. Petitioner has therefore 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 hereby **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.

SO ORDERED.

A handwritten signature in blue ink, appearing to read "H. Alexander Manuel", is written over a horizontal line.

H. Alexander Manuel
Administrative Judge