

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

In the Matter of:

**RODNEY SIBERT,**

Petitioner

HUDOHA No. 13-AM-0056-AG-020

Claim No. 2010280802A

March 13, 2013

**DECISION AND ORDER**

On November 29, 2012, Rodney Sibert (“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. § 17.170. Pursuant to 31 C.F.R. § 285.11(f)(10)(ii), HUD must suspend any active wage withholding order beginning on the 61st day after receipt of the hearing requested and continuing until a written decision has been rendered.

**Background**

On or about May 18, 1992, Petitioner executed and delivered a Retail Installment Contract (“Note”) to Logan Laws Financial Corporation (“Logan”) in the amount of \$14,425.35 (Secretary’s Statement (“Sec’y Stat.”), filed January 8, 2012, ¶ 2; Ex. 1, Note.)

Logan was defaulted as an issuer of Mortgage Backed Securities (“MBS”) due to its failure to comply with the program requirements of HUD’s Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association (“Ginnie Mae”). (*See* Declaration of Paul St. Laurent III, Director, Ginnie Mae (“Laurent Decl.”), dated December 27, 2012, ¶ 1-4.) As a result, Logan’s rights and interest in Petitioner’s loan were assigned to Ginnie Mae by virtue of the Guaranty Agreement entered into between Logan and Ginnie Mae. (*Id.*) Given that Petitioner is currently in default, Ginnie Mae is entitled to avail itself of all available remedies in order to obtain repayment from Petitioner. (Laurent Decl., ¶ 5-6.)

HUD's attempts to collect the debt from Petitioner have been unsuccessful. (Sec'y Stat., ¶ 5; Laurent Decl., ¶ 6.) The Secretary alleges that Petitioner is indebted to HUD in the following amount:

(a) \$5,480.71 as the unpaid principal balance as of December 18, 2012.

(Sec'y Stat., ¶ 7.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Garnishment Notice"), dated November 21, 2012, was mailed to Petitioner. (Sec'y Stat., ¶ 6; Laurent Decl., ¶ 7.) Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD, as required by 31 C.F.R. 285.11 (e)(2)(ii). (Sec'y Stat., ¶ 6.) The record does not show that Petitioner has entered into such an agreement. (*See* Sec'y Stat., ¶ 6; Laurent Decl., ¶ 7.)

The Secretary proposes a repayment schedule of 10% of Petitioner's disposable pay. (Sec'y Stat., ¶ 8; Laurent Decl., ¶ 9.)

### **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 the 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 Director of Ginnie Mae. (Ex. 1; Ex. 2.) Accordingly, I find that the Secretary has met his initial burden of proof.

Petitioner does not dispute the existence or enforceability of the debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed November 29, 2012.) Rather, Petitioner disputes the amount of the proposed garnishment on the basis that he "can not afford the garnishment at the present time." (*Id.*) This Court interprets Petitioner's statement as an assertion that a garnishment in the amount requested by the Secretary will create a financial hardship to Petitioner. Given that the Secretary has met his initial burden of proof, the burden therefore shifts to Petitioner to prove that the garnishment amount in question will, in fact, create a financial hardship.

This Court ordered Petitioner to file, "on or before January 14, 2012," any documentary evidence proving that he did not owe all or part of the alleged debt. (Notice of Docketing, Order and Stay of Referral ("Notice of Docketing"), issued December 3, 2012, p. 2.) The Order encouraged Petitioner to file evidence that would show "that the terms of the repayment schedule...would cause financial hardship." However, Petitioner failed to file any evidence by

that date. (*Id.*) As a result, the Court issued another Order instructing Petitioner to file evidence “on or before January 4, 2013.” (Order for Documentary Evidence, issued January 24, 2012.) This 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 for Documentary Evidence.)

Petitioner failed to comply with this Order as well. To date, Petitioner has not filed any documentary evidence supporting his claim that the proposed garnishment amount will create financial hardship.<sup>1</sup> As a result, Petitioner has not met his burden of proving that the garnishment amount in question will create a financial hardship for Petitioner. 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.

The Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. Consequently, I find that wage garnishment would be appropriate at this time.



H. Alexander Manuel  
Administrative Judge

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<sup>1</sup> Petitioner filed a Consumer Debtor Financial Statement with Petitioner’s Request for Hearing. (Pet’r’s Hr’g Req.) However, the Order of January 24, 2012, explicitly listed the types of evidence (pay statements, bank statements, and proof of necessary household expenses) that Petitioner was required to file in order to support Petitioner’s financial hardship argument. Petitioner failed to provide any documentation or even to respond to the Order. (*See* Order for Documentary Evidence.) Even if this Court considers Petitioner’s unsubstantiated Consumer Debtor Financial Statement, Petitioner’s financial hardship argument is unpersuasive. Petitioner has reported in his Consumer Debtor Financial Statement a fluctuating gross monthly income that is between \$3,500 and \$4000, and monthly household expenses (both necessary and unnecessary) of \$2,205. (Pet’r’s Hr’g Req.) Assuming, arguendo, that the reported income and expenses are accurate, Petitioner is left with a surplus of at least \$1,295 and at most \$1,795 to cover taxes and other mandatory deductions. As a result, Petitioner has not shown that a 10% garnishment would create a financial hardship for Petitioner.