

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

In the Matter of:

Michael Jenkins,

Petitioner.

HUDOHA No. 13-AM-0082-AG-033

Claim No. 780352024

June 7, 2013

DECISION AND ORDER

On February 1, 2013, Michael Jenkins (“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.

The administrative judges of this Court have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment. 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). Petitioners, 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, Petitioners may present evidence that the terms of the repayment schedule are unlawful, would cause an undue financial hardship to Petitioners, or that collection of the debt may not be pursued due to operation of law. Id.

Pursuant to 31 C.F.R. § 285.11(f)(10)(ii), on February 5, 2013, this Court stayed further wage garnishment proceedings until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral (“Notice of Docketing”), issued February 5, 2013.)

Background

On or about June 28, 1995, Petitioner and Jean Jenkins executed and delivered a Retail Installment Contract –Security Agreement (“Note”) to Oakwood Mobile Homes of Fort Worth, TX, in the amount of \$37,888.50, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Secretary’s Statement (“Sec’y. Stat.”), ¶ 2-3, filed February 22, 2013); Exhibit 1, Note.) Petitioner defaulted on the Note, and

the Note was subsequently assigned to HUD. (Id., at ¶ 4; Exhibit 2, Declaration of Brian Dillon¹ (“Dillon Decl.”), ¶ 3.)

The Secretary has made efforts to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec’y Stat., ¶ 5; Dillon Decl., ¶ 2.) The Secretary therefore alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$21,399.14 as the unpaid principal balance as of January 31, 2013;
- (b) \$11,886.67 as the unpaid interest on the principal balance at 6% per annum through January 31, 2013; and
- (c) interest on said principle balance from February 1, 2013, at 6% per annum until paid.

(Sec’y Stat., ¶ 8; Dillon Decl., ¶ 4.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Garnishment Notice”), dated April 4, 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 repayment agreement with HUD under mutually agreeable terms. (Sec’y Stat., ¶ 6; Dillon Decl., ¶ 6.) To date, Petitioner has not entered into a written repayment agreement. Id.

A Wage Garnishment Order was issued, and the amount garnished to date is reflected in the above stated amounts. (Sec’y Stat., ¶ 7; Dillon Decl., ¶¶ 7-8.) Based on the pay statement Petitioner provided, the Secretary proposes a repayment schedule of \$75.39 weekly or 15% of Petitioner’s disposable income. (Sec’y Stat., ¶ 9; 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 debt is incorrect or unenforceable, or that the terms of the proposed repayment schedule would cause financial hardship. 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 the Asset Recovery Division for HUD. (See Sec’y Stat.; Exs. 1 and 2.) I find that the Secretary has therefore met his burden.

Petitioner does not dispute the existence or enforceability of the debt. (Petitioner’s Hearing Request (“Pet’r’s Hr’g Req.”), filed February 1, 2013.) Rather, he asserts that a garnishment in the amount requested by the Secretary will create a significant financial hardship.

¹ Brian Dillon is the Director of the Asset Recovery Division in the Financial Operations Center of the United States Department of Housing and Urban Development.

Specifically, in his hearing request, Petitioner indicated the “[t]erms of proposed repayment schedule would create financial hardship.” He further indicated that he “[is] a single parent...never received any child support... lost my job and house... have [sic] unemployed for 5 years...I got my job back in May 2010.” (Pet’r’s Hr’g Req.) Petitioner further asserts that he supports his daughter and two grandchildren. Id.

In the *Notice of Docketing*, this Court stated that Petitioner may “present evidence that the terms of the repayment schedule are unlawful or would cause a financial hardship to Petitioner.” (Notice of Docketing, issued Feb. 5, 2013.) Petitioner failed to respond to the *Notice of Docketing*. This Court then issued a second order notifying Petitioner that his response to the *Notice of Docketing* was past due and directed him to file documentary evidence to prove financial hardship on or before April 16, 2013. (Order, issued March 27, 2013.) The *Order* instructed Petitioner that proof of financial hardship:

“[m]ust consist of pay statements and proof of actual payment necessary of household expenses, e.g. receipts, bank statements, and copies of checks, money orders, etc. for payment of mortgage, rent, food, transportation, necessary medical expenses, and other basic household necessities.”

Id.

The *Order* stated that, “[f]ailure to comply with this Order may result in ... the entry of judgment based on the documents of record.” Id. (emphasis in original). To date, the only evidence filed by Petitioner was a U.S. Individual Income Tax Return form from 2009, a 2011 Client Funding Information Sheet, an Earning Statement for the period ending January 20, 2013, an undated Notice of Deficiency for a Chapter 13 Bankruptcy issued by the United States Bankruptcy Court in the Northern District of Texas, a Notice of Disclosure of Debt to Consumer Reporting Agency dated August 18, 2004, Petitioner’s HUD Debt Resolution Program Financial Statement, and an Asset Recovery Division Solvency/Cash flow Worksheet.

While some of these documents provide proof of income, they do not provide proof that Petitioner’s alleged debt to HUD has been discharged by Order of the United States Bankruptcy Court.

Petitioner’s filings also do not corroborate or provide additional proof of payment for the household expenses listed in the HUD Debt Resolution Program Financial Statement. Petitioner’s documents therefore do not provide the dispositive evidence required to prove that he is not indebted to HUD or that financial hardship would result from repayment of the debt, as ordered in the Notice of Docketing and the Order of March 27, 2013. I therefore find that Petitioner is indebted to HUD in the amounts claimed by the Secretary and that repayment of the debt would not cause a financial hardship for Petitioner.

Petitioner is notified that he “may at any time, request a review by the agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.” 31 C.F.R. § 285.11(k)(1).

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, entered on February 5, 2013, is **VACATED**. It is

ORDERED that the Secretary is authorized to seek collection of the subject debt by means of administrative wage garnishment to the extent authorized by law.

A handwritten signature in black ink, appearing to read "H. Alexander Manuel", written in a cursive style.

H. Alexander Manuel
Administrative Judge