

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

In the Matter of:

**DEMETRIUS SMITH,**

Petitioner.

HUDOHA No. 13-AM-0096-AG-041

Claim No. 7807378770A

September 5, 2013

**DECISION AND ORDER**

On March 7, 2013, Demetrius Smith ("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" or "the Secretary"). 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 by debtors.

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. On March 8, 2013, pursuant to 31 C.F.R. § 285.11(f)(4), this Office ordered the Secretary not to issue any new wage garnishment order against Petitioner while this case is pending before this Office. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), issued March 8, 2013.) However, a wage garnishment order had been previously imposed against Petitioner on December 11, 2012, and four garnishment payments were assessed and credited to Petitioner's account. (Secretary's Statement, filed April 1, 2013 ("Sec'y Stat."), ¶ 8.)

**Background**

The Secretary states that, on or about September 27, 2007, Petitioner executed and delivered a Property Improvement Program Note ("Note") to Fifth Third Bank of Southfield, Michigan in the amount of \$14,571.72, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat. ¶¶ 2, 3; Ex. 1, Note.) Petitioner incurred this debt through the Michigan State Housing Development Authority. (Sec'y Stat.; Ex. 1, Note, p. 1.) On or about February 25, 2011, Petitioner defaulted on the Note. By the terms of the Note, the Michigan State Housing Development Authority assigned the Note to the United States of America. (Sec'y Stat., ¶ 4; Note, w/ attached Allonge, p.3; Ex. 2,

Declaration of Brian Dillon<sup>1</sup> (“Dillon Declaration”) ¶ 3.) The Secretary maintains that upon default by Petitioner, all rights, title, and interest in Petitioner’s loan were assigned to HUD, and that, as rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (See Sec’y Stat., ¶ 3.)

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. (Sec’y Stat., ¶ 5; Ex. 2, Dillon Decl., ¶ 4.) As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$13,304.39 as the unpaid principal balance as of March 25, 2013;
- b) \$311.95 as the unpaid interest at 1% on the principal balance through March 25, 2013, and at 1% continuing thereafter;
- c) \$120.38 as the unpaid penalties as of March 25, 2013; and
- d) \$35.33 as the unpaid administrative costs as of March 25, 2013;

(Sec’y Stat.; Ex. 2, ¶4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Garnishment Notice”), dated November 8, 2012, was mailed to Petitioner, in accordance with 31 C.F.R. 285.11(e). (Sec’y Stat., ¶ 6; Ex. 2, Dillon Decl., ¶ 5.) 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). (Sec’y Stat. ¶ 6; Ex. 2, Dillon Decl. ¶ 6.) The record does not show that Petitioner has entered into such an agreement. *Id.* Accordingly, the Secretary proposes a repayment schedule of 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 9; Ex. 2, 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 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 Petitioner’s indebtedness, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note signed by Petitioner, along with the sworn declaration of the Director of the Asset Recovery Division, HUD Financial Operations Center, declaring that Petitioner’s debt calculations were based on his review of Petitioner’s payment history as shown in HUD’s Debt Collection and Asset Management System. (See Sec’y Stat.; Ex. 2, Dillon Decl. ¶ 3.) Accordingly, the Court finds the Secretary has met his initial burden of proof.

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<sup>1</sup> Brian Dillon is the Director of the Asset Recovery Division of the Financial Operations Center for HUD in Albany, NY.

Petitioner has filed two statements by email with this Court, neither of which dispute Petitioner's indebtedness to HUD in this case. In his February 20, 2013 statement filed with his Hearing Request, Petitioner acknowledged that he offered to "pay \$250.00 a month," toward his debt to HUD in this case, and that he received a telephone call from "someone [wanting] to discuss the arrangement." (Petitioner's Letter, dated February 20, 2013.) The Notice of Docketing ordered Petitioner to file documentary evidence, on or before April 22, 2013, to prove that he did not owe the alleged debt to HUD in this case, as well as documentary evidence to prove that the proposed repayment schedule by HUD would impose a financial hardship upon Petitioner. Specifically, Petitioner was ordered to file:

documentary evidence which will prove that all or part of the alleged debt is either unenforceable or not past due. This documentary evidence may be attached to a short petition supported, where necessary, by affidavit or declaration setting forth Petitioner's contentions and relevant legal argument. Petitioner may also present evidence that the terms of the repayment schedule are unlawful or would cause a financial hardship to Petitioner.

(Notice of Docketing, p. 2) Petitioner failed to comply with this Order. Accordingly, on May 1, 2013, the Court again ordered Petitioner to file documentary evidence, on or before May 20, 2013, to prove that he did not owe the debt in this case, or to file proof that the proposed repayment schedule would cause financial hardship for Petitioner. Petitioner failed to comply with the May 20, 2013 Order, as well. However, on June 13, 2013, Petitioner sent an email to Government Counsel which was subsequently forwarded by counsel to the Court. (Petitioner's Letter, dated June 13, 2013 ("June 13<sup>th</sup> email").) In the June 13<sup>th</sup> email, Petitioner stated that he suffers "from Depression and . . . sometimes forget things." Petitioner stated that he "was no longer working for [his previous employer]" and requested additional time to file evidence of financial hardship. Nowhere in the June 13<sup>th</sup> email did Petitioner deny his indebtedness to HUD in this case.

On June 13, 2013, the Court granted Petitioner additional time to file evidence of financial hardship, as well as evidence to prove that he has been employed for less than one year with his new employer, to wit:

- 1) that Petitioner has not been continuously employed at his current position for at least 12 consecutive months; or
- 2) that repayment of the alleged debt in this case would result in financial hardship. A demonstration of financial hardship must be proven by filing documentary evidence of pay statements and proof of actual payment of necessary 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. Petitioner may file an affidavit or sworn declaration in support of Petitioner's legal arguments and evidence.

(Order, dated June 13, 2013.) Petitioner was further notified 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.

(*Id.*) Petitioner also failed to comply with the June 13, 2013 Order.

Petitioner has filed no documentary evidence to prove that he did not execute the Note to Fifth Third Bank of Southfield, Michigan, or to prove that the repayment schedule proposed by the Secretary would result in financial hardship to him. In fact, Petitioner filed no documentary evidence in this case beyond his emails of February 20, 2013 and June 13, 2013, in support of his allegations of financial hardship. Petitioner failed to file such evidence despite having been ordered to do so on three separate occasions. (Notice of Docketing, p. 2; Order, dated May 1, 2013; Order, date June 13, 2013.)

Upon proper assignment of the Note from the Fifth Third Bank to the United States of America, the Secretary became entitled to enforce the Note. *See Ronald G. Brauer*, HUDBCA No. 99-C-CH-Y304 (Feb. 29, 2000) (holding that “[a]n assignment of a contract, without more, is insufficient to release Petitioner from liability under the contract in the event of default or deficiency by the assuming parties.”); (*citing Darla A. Rivera*, HUDBCA No. 99-C-NY-Y60 (Oct. 22, 1999)). Accordingly, the Court finds that Petitioner’s argument fails for lack of corroborating evidence, and that the debt is past due and enforceable in the amount claimed by the Secretary. *See Troy Williams*, HUDOA No. 09-M-CH-A WG52 (June 23, 2009) (“assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.”) Having filed little or no proof to demonstrate financial hardship, I further find that Petitioner has not demonstrated that repayment of the debt according to the Secretary’s proposed repayment schedule would create a financial hardship for him. *See Judith Herrera*, HUDOA No. 12-M-CH-AWG27 (July 13, 2012).

Petitioner has stated that he is willing to enter into a payment arrangement plan to pay the balance owed on the alleged debt. (*See* June 13<sup>th</sup> email.) This Court is not authorized to extend, recommend, or accept any payment or settlement offer on behalf of HUD. Petitioner may wish to discuss this matter with counsel for the Secretary or contact Lester J. West, Director, HUD Financial Operations Center, Corporate Circle, Albany, NY 12203-5121 at 1-800-669-5152, extension 4206. However, Petitioner is notified that HUD regulations provide 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 dated March 8, 2013, 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 amount of 15% of Petitioner's disposable pay.

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

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H. Alexander Manuel  
Administrative Judge