

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

In the Matter of:

CORYRAY BOWEN,

Petitioner

HUDOHA No: 13-AM-0101-AG-044

Claim No. 780751779OA

June 24, 2013

DECISION AND ORDER

On March 26, 2013, Coryray Bowen (“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. Pursuant to 31 C.F.R. § 285.11(f)(4), on March 26, 2013, 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”), issued March 26, 2013.)

Background

The Secretary states that on May 7, 2009, Petitioner executed and delivered a Retail Installment Contract (“Note”) to The Home Show-Louisa, in the amount of \$60,737.94, that was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (“Sec’y Stat.”), ¶ 2, filed April 5, 2013; Ex. A, Note.) Petitioner incurred this debt for the purchase of a manufactured home. (Sec’y Stat. Ex. A.) Contemporaneously, on May 7, 2009, the Note was assigned by The Home Show-Louisa to 21st Mortgage Corporation. (Sec’y Stat. ¶ 3; Ex. A, p. 4.) Subsequent to this assignment, the Note was assigned by 21st Mortgage Corporation to Vanderbilt Mortgage and Finance, Inc. (Sec’y Stat. ¶ 4; Ex. B, Allonge to Note.) Petitioner failed to make payment on the Note as agreed. (Sec’y Stat. ¶ 5.) Consequently, in accordance with 24 C.F.R. § 201.54, Vanderbilt Mortgage and Finance, Inc. assigned the Note to the United States. (*Id.*) The Secretary is the holder of the

Note on behalf of the United States. (See Sec'y Stat. ¶ 5; Ex. D, Declaration of Brian Dillon¹, ("Dillon Decl."), ¶ 4.)

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. (Sec'y Stat. ¶ 6; Dillon Decl. ¶ 4.) As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$16,144.49 as the unpaid principal balance as of February 28, 2013;
- b) \$964.37 as the unpaid interest on the principal balance at 1% per annum through February 28, 2013; and,
- c) interest on said principal balance from March 1, 2013, at 1% per annum until paid.

(Sec'y Stat., ¶ 6; Dillon Decl., 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Garnishment Notice"), dated February 15, 2013, was mailed to Petitioner, in accordance with 31 C.F.R. § 285.11(e). (Sec'y Stat., ¶ 7; 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., ¶ 8; Dillon Decl., ¶ 6.) The record does not show that Petitioner has entered into such an agreement. (See Sec'y Stat., ¶ 8; Dillon Decl., ¶ 6.) Accordingly, the Secretary proposes a repayment schedule of bi-weekly repayments of \$257.86. (Sec'y Stat., ¶ 14; Dillon Decl., ¶ 7.)

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 and the sworn declaration of the Director of the Asset Recovery Division of HUD's Financial Operations Center. (See Sec'y Stat., Ex A, Ex. D.) Accordingly, the Court finds the Secretary has met his initial burden.

Petitioner does not dispute the existence of the debt. Rather, Petitioner claims he is no longer liable because Petitioner's ex-wife assumed "the remaining indebtedness on [the property] to Vanderbilt Mortgage" and asks for the Court to seek repayment from her. (See Pet'r's Hr'g

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

Req., filed March 26, 2013.) In support of Petitioner's argument, Petitioner attached the Dissolution of Marriage Settlement Agreement ("Settlement Agreement"). (Pet'r's Hr'g Req.)

In order to demonstrate that Petitioner is not liable for the debt, he must file evidentiary support for the allegation that HUD released him from liability. See First Fed. Sav. Bank v. McCubbins, 217 S.W.3d 201, 203-04 (Ky. 2006); see also Eric and Eliza Rodriguez, HUDOHA No. 13-AM-0061-AG-023 (Apr. 17, 2013) (citing Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (Mar. 23, 2005) (Evidence of repayment of a debt must be in the form of either (1) a written release from HUD showing that petitioners are no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release them from their obligation.)); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (Feb. 28, 1986).

Petitioner's assertion that the Settlement Agreement absolves him of liability for the alleged debt is misplaced. Pursuant to the terms of the Note, as a co-buyer, Petitioner is jointly and severally liable for the Note. (See Sec'y Stat. ¶ 11; Ex. A.) Further, the Settlement Agreement only determines the rights and liabilities between Petitioner and his ex-wife. First Union Home Equity Bank, N.A. v. Bedford Loan & Deposit Bank, 111 S.W.3d 892, 895 (Ky. Ct. App. 2003); see also Cynthia Abernethy, HUDBCA No. 04-D-NY-AWG39 (Mar. 25, 2005) (citing Wendy Kath, HUDBCA No. 89-4518-L8 (December 26, 1989) (A divorce decree purporting to release Petitioner from this joint obligation does not affect the claims of an existing creditor unless the creditor was a party to the action.)). Therefore, since HUD was not a party to the Settlement Agreement between Petitioner and Petitioner's ex-wife, the Settlement Agreement does not absolve Petitioner of his obligation to HUD.

Petitioner also contends that the proposed repayment schedule would create a financial hardship. (Pet'r's Hr'g Req.) In support of Petitioner's financial hardship argument, he attached a Debt Resolution Financial Statement, a pay statement, and a Child Support Order. (Pet'r's Hr'g Req.) Based on the pay statement Petitioner provided, Petitioner's bi-weekly gross pay is \$3,010.70 or \$6,021.40 monthly. (*Id.*) Less \$1,149.86 in federal taxes, \$324.70 in state taxes, \$373.32 in social security, and \$87.32 in Medicare, Petitioner's disposable pay for administrative wage garnishment purposes totals \$4,086.20 monthly.

As evidence of his essential household expenses, Petitioner only filed a Child Support Order showing a child support payment of \$548.00 per month and a Debt Resolution Financial Statement. Although the Court can credit certain household expenses for which bills and receipts were not submitted, Petitioner failed to submit any other credible evidence of his expenses. As such, the expenses alleged on his Debt Resolution Financial Statement will not be considered by the Court.

Under Elva and Gilbert Loera, HUDBCA No. 03-A-CH-AWG28 (Jul. 30, 2004) (crediting the petitioners with certain household expenses for which proof was not submitted because the other financial information submitted by the petitioners, which included numerous bills and receipts, was generally credible), this Court may consider certain uncorroborated essential household expenses. Without any proof of these monthly expenses, however, it is difficult for the Court to determine the credibility of Petitioner's claimed expenses. Here,

Petitioner merely lists the amount of "\$3,000 + more" for a myriad of household expenses. This makes it exceedingly difficult to credit Petitioner's legitimate expenses. 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.")

After deducting the child support payment from Petitioner's disposable pay, Petitioner is left with \$3,538.20 per month. The Secretary's proposed garnishment of \$515.72 per month leaves Petitioner with \$3,022.48 per month. I therefore find that a \$515.72 monthly administrative wage garnishment would not create a financial hardship for Petitioner. Accordingly, the Court finds that Petitioner's arguments fails for lack of credible evidence, and that the debt is past due and enforceable in the amount claimed by the Secretary.

ORDER

For the reasons set forth above, the Order dated March 26, 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 bi-weekly payments of \$257.86 or monthly payments of \$515.72.



H. Alexander Manuel
Administrative Judge