

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

In the Matter of:

CHARLIE HARRELL,

Petitioner

HUDOA No: 13-AM-0121-AG-050
Claim No. 2007089105A

August 19, 2013

DECISION AND ORDER

On May 15, 2013, Charlie Harrell (“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 May 15, 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 May 15, 2013.)

Background

The Secretary states that on April 30, 1991, Petitioner executed and delivered a Retail Installment Contract (“Note”) to Central Carolina Homes, Inc. in the amount of \$13,410.00, 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, filed June 11, 2013; Ex. A, Note.) Petitioner incurred this debt for the purchase of a manufactured home. (Note, p. 1.) Subsequently, on May 29, 1991, the Note was assigned by Central Carolina Homes, Inc. to Logan-Laws Financial Corporation (“Logan-Laws”). (Sec’y Stat., ¶ 3; Note, p. 2.) Logan-Laws was defaulted as an issuer of Mortgage Backed Securities due to its failure to comply with the Government National Mortgage Association’s (“GNMA”) Mortgage Backed Securities program requirements. (Sec’y Stat., ¶ 4; Ex. B, Declaration of Leslie A. Meaux¹, (“Meaux Decl.”), ¶ 4.)

¹ Leslie A. Meaux is the Acting Monitoring Director of the Mortgage Backed Securities Monitoring Division of the Government National Mortgage Association at HUD.

Upon default by Logan-Laws, all of its rights, title, and interest in Petitioner's loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Logan-Laws and GNMA. (Sec'y Stat., ¶ 5; Meaux Decl., ¶ 4.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (See Sec'y Stat., ¶ 6; Meaux Decl., ¶ 5.)

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. (Sec'y Stat., ¶ 7; Meaux Decl., ¶ 6.) As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$6,131.76 as the unpaid principal balance;
- b) \$1,509.89 as the unpaid interest on the principal balance through June 6, 2013; and,
- c) interest on said principal balance until paid.

Id.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Garnishment Notice"), dated April 22, 2013, was mailed to Petitioner, in accordance with 31 C.F.R. 285.11(e). (Sec'y Stat., ¶ 8; Meaux Decl., ¶ 7.) 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., ¶ 9; Meaux Decl., ¶ 7.) The record does not show that Petitioner has entered into such an agreement. See id. Accordingly, the Secretary proposes a repayment schedule of 10% of Petitioner's disposable pay. (Sec'y Stat., ¶ 13; Meaux 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, the sworn declaration of the Acting Monitoring Director of the Mortgage Backed Securities Monitoring Division of GNMA at HUD, and a copy of Petitioner's credit application. (See Sec'y Stat., Ex A, Ex. B, Ex. C, Credit Application.) Accordingly, the Court finds the Secretary has met his initial burden.

Petitioner disputes the existence of the debt. Specifically Petitioner contends that he does not owe the debt claimed by the Secretary "because I never appl[ied] nor did I receive[] a HUD loan. If one was given in my name it was given under false pretense and I would like the person or persons who received this loan under my name be held accountable." (Pet'r's Hr'g Req., filed May 15, 2013.)

While Petitioner's assertion that he never applied for or received a HUD loan appears to be accurate, that argument does not absolve Petitioner of liability for the Note that he signed causing him to be indebted to Central Carolina Homes, Inc., and ultimately, to HUD. Although the Note was not delivered to HUD as the original lender, the Note was properly assigned to Logan-Laws, which was eventually defaulted by HUD. Upon Logan-Law's default, HUD became the proper holder/assignee of the Note. (Sec'y Stat., ¶¶4 – 6; Ex A, Ex. B, Ex. C).

Petitioner has filed no documentary evidence to prove that he did not execute the Note to Central Carolina Homes, Inc., or to show that he did not render the credit application in connection therewith. (See Sec'y Stat., Ex. C). In fact, Petitioner filed no documentary evidence in this case beyond his Hearing Request statement in support of his allegations. Petitioner failed to file such evidence despite having been ordered to do so on two separate occasions. (Notice of Docketing, p. 2; Order, dated July 10, 2013.) 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.")

ORDER

For the reasons set forth above, the Order dated May 15, 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.



H. Alexander Manuel
Administrative Judge