

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

In the Matter of:

DERRICK BENALLY,

Petitioner

HUDOHA No. 13-AM-0123-AG-052

Claim No. 7807431490A

October 24, 2013

DECISION AND ORDER

On May 20, 2013, Derrick Benally (“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 U.S. government by debtors.

The HUD Secretary 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.

Background

On or about February 25, 2006, Petitioner executed and delivered to Vanderbilt Mortgage and Finance, Inc., a Retail Installment Contract and Security Agreement (“Note”) in the amount of \$34,546.10. (Secretary’s Statement (“Sec’y Stat.”), ¶ 2, filed June 27, 2013; Ex. 1, Note.) The Note was insured against nonpayment by HUD pursuant to Title I of the National Housing Act. *Id.* at ¶ 3. Petitioner failed to make payment as agreed in the Note. After Petitioner’s default, the Note was assigned to HUD. (Sec’y Stat., ¶ 4; Ex. 2, Declaration of Brian Dillon (“Dillon Decl.”), ¶ 3¹; Ex. 3, Assignment.)

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

- a) \$13,576.02 as unpaid principal balance as of May 30, 2013.

¹ Brian Dillon is Director of the Asset Recovery Division at HUD’s Financial Operations Center in Albany, N.Y.

- b) \$22.62 as the unpaid interest on the principal balance at 1% per annum through May 30, 2013; and
- c) Interest on said principal balance from June 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, dated November 16, 2012, was mailed to Petitioner. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 5.) The Secretary has been unable to obtain a copy of Petitioner's pay statement, and so proposes a repayment schedule of 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 10; 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, and the sworn declaration of Brian Dillon that the debt remains outstanding. Accordingly, the Court finds the Secretary has met his burden.

Petitioner disputes the existence of the debt. Specifically, he contends that he does not owe the debt claimed by the Secretary because "to [his] knowledge, [he] never agreed to a HUD loan." (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), p. 1.) While it is true that HUD was not an original party to the Note (it obtained the Note via assignment), this circumstance does not absolve Petitioner of responsibility to repay the Note. The Note states that the "Seller may assign this contract to any person or entity. All rights granted to Seller under this contract shall apply to any assignee of this contract." (Sec'y Stat., Ex. 1, p. 4; see also, Sec'y Stat., Ex. 3.) Accordingly, the obligations Petitioner owed to Vanderbilt Mortgage and Finance, Inc., under the Note are now fully enforceable by HUD.

Petitioner acknowledges that he signed the contract, but states that "the salesperson gave [him] paperwork for [his] signature. It was not explained to [him] what [he] was signing for." (Pet'r's Hr'g Req., p. 1.) The fact that Petitioner did not realize that his signature on the Note could potentially leave him liable to the federal government also does not release him from that liability. An individual is presumed to understand the terms of the contracts he signs. In this case, the assignment clause in the Note was conspicuous, clearly labeled, and unambiguous. Moreover, just above Petitioner's signature, the Note warns: "Do not sign this document before you read it..." and "It is important that you thoroughly read the contract before you sign it." Having signed the contract, Petitioner remains bound by its terms.

Additionally, Petitioner has provided no evidence that the debt has been paid, or that he has been released from his obligations. On May 22, 2013, the Court issued a *Notice of Docketing, Order, and Stay of Referral* (“Notice of Docketing”) ordering Petitioner to “file documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due” no later than July 21, 2013. Petitioner failed to file such evidence by that date. As a result, the Court issued its *Order for Documentary Evidence* on July 24, 2013, ordering Petitioner to provide his evidence no later than August 19, 2013. This latter order warned Petitioner that, “failure to comply with this Order may result in ... the entry of judgment based on the documents of record.” (Order for Documentary Evidence, issued July 24, 2013.) (emphasis in original). Petitioner again failed to provide the necessary evidence.

To date, Petitioner has only filed the assertions made in the *Hearing Request*, without any documentary evidence to support them. The Court has consistently maintained that “assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” (*Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996))). Petitioner has therefore failed to meet his burden of proof. Based on the foregoing, I find that Petitioner is liable for the debt in the amount alleged 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 hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.



H. Alexander Manuel
Administrative Judge