

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

In the Matter of:

**STEVEN BISHOP**

Petitioner

HUDOHA No. 13-AM-0140-AG-062

Claim No. 721006522

February 26, 2014

**DECISION AND ORDER**

On July 10, 2013, Steven Bishop (“Petitioner”) requested a hearing concerning a proposed repayment schedule incident to a wage garnishment order 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 federal government.

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. § 17.170. Pursuant to 31 C.F.R. § 285.11(f)(10)(ii), HUD must suspend any active wage withholding order beginning on the 61st day after receipt of the hearing requested and continuing until a written decision has been issued.

**Background**

On or about April 26, 2006, Petitioner executed and delivered a Partial Claims Promissory Note (“Note”) to the Secretary of the United States Department of Housing and Urban Development (“Secretary” or “HUD”) in the amount of \$9,281.58. The Note evidenced a Subordinate Mortgage held by the Secretary. (Secretary’s Statement (“Sec’y Stat.”), filed August 7, 2013, ¶ 2; Declaration of Gary Sautter<sup>1</sup> (“Sautter Decl.”), dated July 19, 2013, ¶ 4; Ex. 2, Note.)

The Note specifies that the amount to be repaid becomes due and payable when the first of four events occurs. One such event is when the Petitioner has paid in full all amounts due

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<sup>1</sup> Gary Sautter is Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center.

under the primary note insured by the Secretary. (Sec'y Stat., ¶ 4; Sautter Decl., ¶ 4.) On or about October 21, 2009, the FHA mortgage insurance on the primary mortgage was terminated when the lender indicated the primary note and mortgage was paid in full. (Sec'y Stat., ¶ 5; Sautter Decl., ¶ 4.)

HUD's attempts to collect the debt from Petitioner have been unsuccessful. (Sec'y Stat., ¶ 6; Sautter Decl., ¶ 5.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$7,063.18 as the total unpaid principal balance as of July 1, 2013;
- (b) \$141.12 as the unpaid interest on the principle balance at 1% per annum through July 1, 2013;
- (c) \$771.00 as the unpaid penalties and administrative costs as of July 1, 2013; and
- (d) Interest on said principal balance from July 2, 2013, at 1% per annum until paid.

(Sec'y Stat., ¶ 8; Sautter Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Garnishment Notice"), dated March 21, 2013, was mailed to Petitioner. (Sec'y Stat., ¶ 7; Sautter Decl., ¶ 6.) Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD, as required by 31 C.F.R. 285.11(e)(2)(ii). (Sautter Decl., ¶ 7.) The Petitioner did not enter into an agreement based on the March 21, 2013, Garnishment Notice. (Sautter Decl., ¶ 7.) Based upon Petitioner's bi-weekly pay statement, a wage garnishment authorized at 15% of Petitioner's disposable income would equal \$142.81 per pay period. (Sec'y Stat., ¶ 12.) However, the Secretary seeks to garnish only \$100.00 bi-weekly, in accordance with an agreement between HUD and the petitioner. (Sec'y Stat., ¶ 13; Sautter Decl., ¶ 13.)

### **Discussion**

The Secretary has the initial burden of proving 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 the debt does not exist 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 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 Declaration of Gary Sautter. (Sec'y Stat., Ex. 1; Ex. 2.) Accordingly, I find that the Secretary has met his initial burden of proof.

Petitioner does not dispute the existence or enforceability of the debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed July 10, 2013.) Rather, Petitioner disputes the amount of the proposed garnishment on the basis that he and his wife are living on a single income. Id. Also, he states that his wife recently had surgery and is unable to look for a job. Id. This Court interprets Petitioner's statement as an assertion that a garnishment in the amount

requested by the Secretary will create a financial hardship for Petitioner. Given that the Secretary has met his initial burden of proof, the burden therefore shifts to Petitioner to prove that the garnishment amount in question will, in fact, create a financial hardship.

This Court ordered Petitioner to file, "on or before October 8, 2013," any documentary evidence proving that he did not owe all or part of the alleged debt. (Notice of Docketing, Order and Stay of Referral ("Notice of Docketing"), issued September 10, 2013.) The Notice of Docketing encouraged Petitioner to file evidence that would show "that the terms of the repayment schedule...would cause financial hardship." However, Petitioner failed to file any evidence by that date. *Id.* As a result, the Court issued another order instructing Petitioner to file evidence "on or before November 12, 2013." (Order for Documentary Evidence, issued October 28, 2013.) The Order notified Petitioner that:

"Failure to comply with this Order may result in the imposition of sanctions that may 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."

*Order for Documentary Evidence.*

Petitioner failed to comply with this order as well. To date, Petitioner has not filed any documentary evidence supporting his claim that the proposed garnishment amount will create financial hardship. As a result, Petitioner has not met his burden of proving that the garnishment amount in question will create a financial hardship for Petitioner. In addition, Petitioner has filed no evidence to refute the Secretary's Statement declaring that Petitioner has voluntarily entered into a repayment schedule with the Secretary in the amount of \$100.00, bi-weekly. *See* Sautter Declaration, ¶13. Accordingly, I find Petitioner's debt in this case to be past due and legally enforceable in the amount claimed 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 hereby **VACATED**. It is

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of \$100.00, bi-weekly, in accordance with the repayment schedule reached between the parties.

**SO ORDERED.**



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H. Alexander Manuel  
Administrative Judge