

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

In the Matter of:

DWAYNE E. SUMTER,

Petitioner

HUDOHA No. 13-AM-0183-AG-079
Claim No. 5526443 LL 9244

Judge H. Alexander Manuel

June 4, 2014

DECISION AND ORDER

Dwayne E. Sumter ("Petitioner") was notified that pursuant to 31 C.F.R. § 285.11(e) and 31 U.S.C. § 3720D, the Secretary of the U.S. Department of Housing and Urban Development ("HUD") intended to garnish the disposable pay of Petitioner in order to satisfy Petitioner's alleged debt to HUD.

On September 6, 2013, Petitioner requested a hearing concerning a proposed administrative wage garnishment in relation to a debt allegedly owed to HUD. 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. The Office of Hearings and Appeals has been designated to conduct a hearing to determine whether the debt is legally enforceable. 31 C.F.R. § 285.11. The Secretary has the initial burden of proof to show both the existence as well as the amount of the alleged debt. 31 C.F.R. 285(f)(8)(i). In addition, 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 a result of Petitioner's hearing request, referral of the debt to the U.S. Department of the Treasury for the administrative offset was temporarily stayed by the Court on September 25, 2013, until the issuance of a written decision by the Administrative Judge. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated September 25, 2013.)

Background

On or about February 13, 1993, Petitioner executed and delivered a Retail Installment Contract ("Note") to Highland Home Brokers Inc. in the amount of \$13,467.00. (Secretary's Statement ("Sec'y Stat.") ¶ 2, filed October 31, 2013; Ex. A, Note.) Subsequently, the Note was assigned by Highland Home Brokers Inc. to Logan-Laws Financial Corporation ("Logan Laws").

(Sec'y Stat. ¶ 3.) The Note was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Sec'y Stat. ¶ 2.)

As a result of its failure to comply with the Government National Mortgage Association's ("GNMA's") MBS program requirements, Logan Laws was defaulted as an issuer of Mortgage - Backed Securities. (Sec'y Stat. ¶ 4; Declaration of Leslie A. Meaux¹ ("Meaux Decl.") ¶ 4 .) Petitioner's loan was then assigned to GNMA in accordance with the Guarantee Agreement between Logan Laws and GNMA (Sec'y Stat. ¶ 5; Meaux Decl. ¶4.) Petitioner failed to make payment on the Note as agreed. (Sec'y Stat. ¶ 7.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. (Sec'y Stat. ¶ 7; Meaux Decl. ¶ 6.) The Secretary contends that Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$6,855.65 as the unpaid principal balance;
- (b) \$6,411.85 as the unpaid interest on the principal balance through June 6, 2013;
- (c) \$316.62 as the unpaid administrative costs;
- (d) \$1,945.13 as the unpaid penalty; and
- (e) Interest, administrative costs, and penalty on said principal balance until paid.

(Sec'y Stat. ¶ 7, Meaux Decl. ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated August 21, 2013 was mailed to Petitioner. (Sec'y Stat. ¶ 8, Meaux Decl. ¶ 7.) Petitioner was afforded the opportunity to enter into a written repayment agreement under mutually agreeable terms in accordance with 31 C.F.R. § 285.11(e). However, Petitioner did not enter into a repayment agreement or pay the debt in accordance with the August 21, 2013 Notice. (Sec'y Stat. ¶ 9; Meaux Decl. ¶8.)

Discussion

The Secretary has the initial burden of proof to show both the existence as well as the amount of the alleged debt. 31 C.F.R. § 285(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 Monitoring Director of the Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association ("Ginnie Mae") within HUD, and a copy of

¹ Leslie Meaux is the Monitoring Director of the Mortgage-Backed Securities Monitoring Division of Ginnie Mae.

Petitioner's FedDebt Case Financial History. (See Sec'y Stat., Ex. A, Ex. B, Ex. C.) Accordingly, the Court finds the Secretary has met his initial burden.

Petitioner disputes the amount of the debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), received September 6, 2013.) On or about September 6, 2013, Petitioner requested a hearing concerning the existence, amount, or enforceability of the debt to HUD. However, Petitioner does not provide documentary evidence to prove that he does not owe the full amount of the debt claimed by the Secretary. (Pet'r's Hr'g Req.) In addition, Petitioner filed no documentary evidence in this case beyond the filing of his Hearing Request in support of his allegations.

The Notice of Docketing and the Order for Documentary Evidence, dated November 25, 2013, ordered Petitioner to file documentary evidence to prove that he did not owe the alleged debt, in the amount claimed by the Secretary. Petitioner failed to comply with both orders.

This Court has long-held 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)). Therefore, the Court finds that Petitioner's argument fails for lack of corroborating evidence, and that the alleged debt in this case is past due and enforceable in the amount claimed by the Secretary.

Furthermore, having filed no documentary evidence to demonstrate financial hardship, the Court also finds 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.)

ORDER

For the reasons set forth above, the Order, dated September 25, 2013, imposing the stay of referral of this matter to the U.S. Department of 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 ten (10) percent of Petitioner's disposable income.

SO ORDERED.



H. Alexander Manuel
Administrative Judge