

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

In the Matter of:

William W. Snoh,

Petitioner.

HUDOHA No. 13-VH-002-AG-1

Claim No. 780712573

February 1, 2013

DECISION AND ORDER

On October 3, 2012, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“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.

APPLICABLE LAW

The administrative judges of this Court have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. The Secretary has the initial burden of proof to show the existence and amount of the 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). 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.*

Procedural Background

On October 4, 2012, the Court stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral, p. 2.) On October 22, 2012, the Secretary filed his Statement along with documentary evidence in support of his position. To date, Petitioner has not filed documentary evidence in support of his position. This case is now ripe for review.

Findings of Fact

On February 14, 2003, Petitioner executed and delivered a Retail Installment Obligation (“Note”) to Domestic Bank in the amount of \$16,361.00. (See Secretary’s Statement (“Sec’y

Stat.”), ¶ 2; Sec’y Stat., Ex. C, ¶ 1.) The Note was insured against nonpayment by HUD pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec’y Stat., ¶ 2.) Petitioner failed to make payments as agreed under the Note. (Sec’y Stat., ¶ 3.) On May 18, 2009, after default by Petitioner, Domestic Bank assigned the Note to HUD pursuant to 24 C.F.R. § 201.54. (*Id.*)

The Secretary has made efforts to collect this debt from Petitioner, but Petitioner remains in default. (Sec’y Stat., ¶ 3; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$10, 459.72 as the unpaid principal balance as of September 30, 2012;
- (b) \$0.00 as the unpaid interest on the principal balance at 3% per annum through September 30, 2012;
- (c) \$0.00 as the unpaid penalties as of September 30, 2012;
- (d) \$0.00 as the unpaid administrative costs as of September 30, 2012; and
- (e) Interest on said principal balance from October 1, 2012, at 3% per annum until paid.

(Sec’y Stat., ¶ 6; Dillon Decl., ¶ 4.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiative Administrative Wage Garnishment Proceedings (“Notice”), dated May 22, 2012, was mailed to Petitioner. (Sec’y Stat., ¶ 4-5; Dillon Decl., ¶ 5-6.) In accordance with 31 C.F.R. § 285.11 (e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under mutually agreeable terms. *Id.* at ¶ 7. Petitioner did not enter into a repayment agreement or pay the debt in full based on the May 22, 2012 Notice. (*See* Sautter Decl., ¶ 6-8.)

The Secretary’s proposed repayment schedule is \$410.12 bi-weekly or 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 13; Dillon Decl., ¶ 10.)

Discussion

Pursuant to 31 C.F.R. § 285.11 (f) (8) (ii), if Petitioner disputes the existence or amount of debt the Petitioner “must present, by a preponderance of the evidence, that no debt exists or that the amount of debt is incorrect.”

In this case, Petitioner claims he does not owe the full amount of the debt as claimed by the Secretary. Petitioner states that his “wife is making payment[s] on the account.” (Petitioner’s Hearing Request, “Pet’r’s Hr’g. Req.,” filed October 3, 2012.) Beyond Petitioner’s allegation challenging the amount of the debt, he has failed to produce documentary evidence in support of his position despite being ordered by this Court on three occasions to do so. (Notice of Docketing, dated October 4, 2012; Order for Documentary Evidence, dated November 19, 2012; Order to Show Cause, dated January 4, 2013.)

The Secretary states, however, that “a review of the file indicates that the Petitioner was not a party to the payment arrangement that was established between HUD and the co-borrower, Ms. Linda Robinson.” (Sec’y. Stat., ¶ 9; Ex. D, Dillon Decl., ¶ 9, Ex. A, Financial Settlement; Ex. B, Repayment Plan.) The Secretary further states that “HUD’s records contain a Debt Resolution Program Financial Statement and a Repayment Plan Terms and Conditions that contains the financial information and signature of Ms. Linda Robinson only.” (*Id.*) As support, the Secretary provided a copy of the repayment plan as evidence that Petitioner’s wife had entered into a payment arrangement with HUD. (Ex. A, Debt Resolution Program Financial Settlement (“Financial Settlement”); Ex. B, Repayment Plan.) Although this evidence supports Petitioner’s allegation that his “wife is making payment[s] on the account,” her payments alone on the alleged debt would not serve as proof that Petitioner has been released from his obligation, as co-signer, to pay the full amount of the debt to HUD.

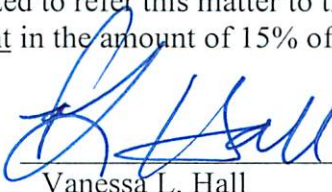
Co-signers of a loan are jointly and severally liable for the obligation and, as a result, “a creditor may sue the parties to such obligation separately or together.” Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). “The Secretary may proceed against any co-signer for the full amount of the debt” because each co-signer is jointly and severally liable for the obligation. Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Further, for Petitioner not to be held liable for the subject debt he must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release him from his obligation. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003)); William Holland, HUDBCA No. 00-A-NY-AA83 (Oct. 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155 (Oct. 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518-H51 (Jan. 27, 1988); 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). Therefore, consistent with Mary Jane Lyons Hardy, Hedieh Rezai, and Franklin Harper, the Court finds that since Petitioner has failed to produce evidence of a written release from his obligation to pay the alleged debt, Petitioner remains legally obligated to pay the full amount of the debt in the amount claimed by the Secretary.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing 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 refer this matter to the U.S. Department of the Treasury for administrative wage garnishment in the amount of 15% of Petitioner’s disposable income.



Vanessa L. Hall

Administrative Judge