

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

In the Matter of:

Steve Skaggs and Apryl Skaggs,

Petitioners.

HUDOHA 13-VH-004-AG-3

Claim No. 771125777OA
771125777OB

February 4, 2013

DECISION AND ORDER

On October 3, 2012, Petitioners requested a hearing concerning proposed administrative wage garnishment in relation to a debt allegedly owed to the United States 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 are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if such action is contested by the debtor. This hearing 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. 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. 285.11 (f)(8)(ii). In addition, Petitioners may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue financial hardship to the Petitioners, or that collection of the debt may not be pursued due to operation of law. (*Id.*)

Procedural Background

On October 3, 2012, this Court stayed the issuance of a wage garnishment withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral (Notice of Docketing)). On October 24, 2012, the Secretary filed his Statement along with documentation in support of his position. To date, Petitioners have failed to submit documentary evidence in support of their position. The case is now ripe for review.

Background

On June 13, 1995, Petitioners executed and delivered a Note to Unicolor Funding, Inc. in the amount of \$10,000.00 that was insured against nonpayment by the Secretary pursuant to Title

1 of the National Housing Act, 12 U.S.C. Sec.1703. (Secretary's Statement ("Sec'y. Stat.") ¶ 1, Ex. 1 p. 1, dated October 24, 2012.) On June 13, 1995, Unicolor Funding Assigned its interest in the Note to Remodelers National Funding Corp. (*Id.*) On January 1, 1998, Firstplus Financial Inc., (formerly known as Remodelers National Funding Corp.) assigned its interest in the Note to First Trust of California, N.A., and First Trust of California, N.A. assigned its interest in the Note to Firstplus Financial, Inc. (Sec'y. Stat., ¶ 1.) After the Petitioners defaulted on the loan, Firstplus Financial, Inc. assigned the Note to the United States of America under the regulations governing the Title 1 Insurance Program. (Sec'y. Stat.; Ex. 1, Note; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD, dated October 9, 2012 ("Dillon Decl."), ¶ 3.) HUD has attempted to collect the amounts due under the Note but Petitioners remain in default. (Sec'y. Stat. ¶ 3, Ex. 2; Dillon Decl., ¶ 4.)

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

- (a) \$9,784.98 as the unpaid principal balance as of October 1, 2012;
- (b) \$7,583.74 as the unpaid interest on the principal balance at 5.0% per annum through October 1, 2012; and
- (c) Interest on said principal balance from October 2, 2012, at 5.0% per annum until paid.

(*Id.*, Ex. 2; Dillon Decl. ¶ 4.) On August 14, 2012, Notices of Intent to Initiate Wage Garnishment Proceedings were sent to the petitioners. (Sec'y. Stat. ¶ 5; Dillon Decl. ¶ 5.) In accordance with 31 C. F. R. 285.11 (e)(2)(ii), Petitioners were offered the opportunity to enter into repayment agreements, and to date, Petitioners have not entered into repayment agreements. (Sec'y. Stat. ¶¶ 6,7; Dillon Decl. ¶ 6.)

On September 14, 2012, a Wage Garnishment Order was sent to Apryl Skaggs' Employer, and based on that Order, Apryl Skaggs' pay has been garnished once in the amount of \$215.12. This garnishment is reflected in the unpaid principal balance above. (Sec'y. Stat. ¶¶ 8, 9; Dillon Decl. ¶¶ 7, 8.) As of October 9, 2012, no Wage Garnishment Order had been issued to Steve Skaggs' employer. Petitioners have not provided HUD with the current pay statements. (Sec'y. Stat. ¶¶ 10, 11; Dillon Decl. ¶¶ 7, 9.)

The Secretary proposes a repayment schedule for Apryl Skaggs of \$215.12 biweekly or 15% of her disposable pay. (Sec'y. Stat. ¶ 12; Dillon Decl. ¶ 9.) The Secretary proposes a repayment schedule for Steve Skaggs of \$482.46 per month or 15% of his disposable pay. (Sec'y. Stat. ¶ 13; Dillon Decl. ¶ 7.)

Discussion

Pursuant to 31 C.F.R. 285.11 (f)(8)(ii), Petitioners may "present by a preponderance of the evidence that all or part of the alleged debt is unenforceable or not past due."

Here, Petitioners contend that: 1) they do not owe the alleged debt because it was included in their Chapter 13 Bankruptcy proceedings; and, 2) the proposed administrative wage garnishment would create a financial hardship. (Petitioners' Hearing Request ("H'rg. Req."), dated August 20, 2012.)

Petitioners first claim that “[they] do not owe the debt...It was included in my [C]hapter 13 bankruptcy which was filed on 12/2/96 and dismissed on 6/3/99.” (H’rg. Req.) However to date, Petitioners have failed to produce any documentary evidence in support of their claim that the alleged debt was discharged as a result of their Chapter 13 bankruptcy.

The Secretary claims, nevertheless, that “Petitioners’ Chapter 13 Bankruptcy case #96-18376 filed on December 2, 1996 in the Eastern District of California was dismissed on June 30, 1999;” and that, “Petitioners have not provided evidence that the debt was discharged through this bankruptcy.” (Sec’y. Stat. ¶¶ 14, 15.) As support, the Secretary provided a copy of a sworn declaration from the director of HUD’s Financial Operations Center in which the director verified that Petitioners’ Chapter 13 Petition was in fact dismissed.

In order for a debt to be discharged in this case as the result of a Chapter 13 Bankruptcy proceeding, the debt should have been included in a Bankruptcy Notice of Discharge. Further, 11 U.S.C.A. § 1328 of the U.S. Bankruptcy Code provides that “in order for a Chapter 13 bankruptcy to discharge creditor’s claim, a creditor receives notice of bankruptcy proceedings” and thereafter “the Chapter 13 plan makes a provision for the claim.” Such is required in order to afford creditors notice and an opportunity to be heard.” (*Id.*) To date, Petitioners have not provided evidence that the alleged debt was included in a Notice of Discharge from the bankruptcy proceeding. Instead the evidence of record proves only that the bankruptcy proceeding was dismissed on June 30, 1999. As a result, without evidence from Petitioners to otherwise refute the evidence presented by the Secretary, I find that Petitioners remain legally obligated to pay the debt that is the subject of this proceeding.

Next, Petitioners claim that “This proposal would cause [a] great financial burden and loss of current home and ability to work.” (H’rg.Req.) Beyond merely alleging the possibility that the proposed garnishment would cause a financial burden, Petitioners have failed to file documentary evidence that would otherwise prove the likelihood of financial hardship occurring, despite being ordered by the Court to produce such evidence. (Notice of Docketing, Order and Stay of Referral, dated October 3, 2012; Order for Documentary Evidence, dated November 19, 2012; Order to Show Cause, dated January 4, 2013.) This Court has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable.” *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). As a result, Petitioners have failed to meet their burden of proof and thus I find that Petitioners’ claim of financial hardship fails for want of proof.

As a final point, Rule 26.4(d) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing party may enter any appropriate order necessary to the disposition of the hearing including a *determination against a noncomplying party*.

(emphasis added).

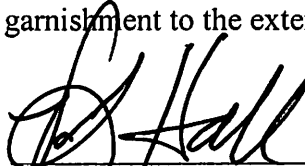
Accordingly, I further find that, pursuant to Rule 26.4(d), Petitioners’ non-compliance with the orders issued by this Court provides an additional basis for rendering a decision against Petitioners.

ORDER

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

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for the 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 the law.



Vanessa L. Hall
Administrative Judge