

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

In the Matter of:

**Grant Cowan,**

Petitioner

HUDOHA 13-VH-0060-AG-22  
Claim No. 780744519

March 27, 2013

**DECISION AND ORDER**

On December 7, 2012, Grant Cowan ("Petitioner") filed a hearing request concerning a proposed administrative wage garnishment relating to 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 United States government.

**Applicable Law**

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. 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 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 any 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 History**

Pursuant to 31 C.F.R. § 285.11(f) (4), on December 7, 2012, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral ("Notice of Docketing"), 2). On December 27, 2012, the Secretary filed his statement along with documentation in support of his position. To date, Petitioner has not filed any documentary evidence in support of his position or in response to any of the Court's orders. This case is now ripe for review.

### **Background**

On August 14, 2008, Petitioner and Lauren M. Early executed and delivered a Retail Installment Contract – Security Agreement (“Note”) in the amount of \$41,249.43.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (“Sec’y. Stat.”) ¶ 2, filed December 27, 2012; Ex. A, Note.) Petitioner defaulted on the Note, and the Note was subsequently assigned to HUD. (Sec’y. Stat., ¶ 4; Ex. B, Assignment; Dillon Decl., ¶ 3.)

The Secretary has attempted to collect this debt from Petitioner, but has not been successful. (Sec’y. Stat., ¶ 5; Dillon Decl., ¶ 4.) As a result, Petitioner remains in default on the Note and is indebted to the Secretary in the following amounts:

- (a) \$14, 886.42 as the unpaid principal balance as of November 30, 2012;
- (b) \$837.65 as unpaid interest on the principal balance at 1.0% per annum through November 30, 2012;
- (c) \$975.80 as the unpaid penalties and administrative cost through November 30, 2012; and,
- (d) interest on said principal balance from December 1, 2012 at 1.0% per annum until paid.

(Sec’y. Stat., ¶ 7; Ex. B, Dillon Decl., ¶ 4)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner on or about November 8, 2012. Sec’y. Stat., Ex. B, ¶ 5. In accordance with 31 C.F.R. 285.11(e) (2) (ii), Petitioner was afforded an opportunity to enter into a written repayment agreement. *Id.*, ¶ 6. “Petitioner, however, did not enter into a written repayment agreement.” *Id.*

Petitioner has not provided a copy of her paystub. (Dillon Decl., ¶ 8.) Therefore, the Secretary proposes “a repayment schedule of \$465.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collections Standards (31 C.F.R. 901.8),” or a wage garnishment order for 15% of Petitioner’s monthly disposable pay. *Id.*

### **Discussion**

Petitioner claims he does not owe the debt and that the proposed garnishment amount would create a financial hardship. However, Petitioner has failed to produce documentary evidence in support of his allegations despite being ordered by this Court on three occasions to comply accordingly. *See* Notice of Docketing; Order for Documentary Evidence, dated January 23, 2013; Order to Show Cause, dated February 20, 2013.

The Secretary claims, on the other hand, that the Petitioner’s debt is past due and legally enforceable and as a result seeks authorization of his proposed repayment schedule for Petitioner. In support of his position, the Secretary produced a copy of the Note signed by Petitioner, along

with a copy of a sworn declaration from the Director of HUD's Asset Recovery Division in which the Director substantiates the debt amount owed by Petitioner. See Sec'y. Stat.; Ex. A, Ex. C. It is evident from the language of the Note that Petitioner agreed with the lender that he would still "be obligated even if the Buyer(s) are released or if you waive or delay enforcement of any of your rights under this contract." Sec'y. Stat., Ex. A, Note, p. 3, CO-SIGNOR OBLIGATION.

Here, since Petitioner has failed to produce sufficient and credible proof in support of his allegations, the Court has determined that the Secretary has met his burden of proof that the alleged debt is past due and legally enforceable against Petitioner. Without any evidence of record from Petitioner to otherwise refute or rebut the evidence presented by the Secretary, the Court finds Petitioner's claims fail for lack 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 officer may enter any appropriate order necessary to the disposition of the hearing including a determination against a noncomplying party.*

(Emphasis added).

Accordingly, I find that, pursuant to Rule 26.4(d), Petitioner's non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

### **ORDER**

Based on the foregoing, 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 in an amount equal to \$465.00 per month, or 15% of Petitioner's monthly disposable pay.



Vanessa L. Hall  
Administrative Judge