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(shaded portions only)
UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

Keith M. Stone,

Petitioner.

HUDOHA 13-VH-0064-AG-26
Claim No. 780743966

April 5, 2013

DECISION AND ORDER

On December 10, 2012, **Keith M. Stone** ("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 18, 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 January 2, 2013, 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 claim of financial hardship. This case is now ripe for review.

Background

On October 20, 2009, Petitioner “executed and delivered a Note to Domestic Bank in the amount of \$25,000.00 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 January 2, 2013; Ex. A, Note. Petitioner failed to make payment on the Note as agreed. *Sec’y. Stat.*, ¶ 3. Consequently, “in accordance with 24 C.F.R. § 201.54, on March 15, 2012, Admirals Bank f/k/a Domestic Bank assigned the Note to the United States of America.” *Id.* The Secretary is the holder of the Note on behalf of the United States of America. *Sec’y. Stat.*, Ex. B.

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. *Sec’y. Stat.*, ¶ 5, Ex. C, *Porter Decl.*,¹ ¶ 4. As a result, Petitioner remains in default on the Note and is indebted to the Secretary in the following amounts:

- (a) \$24,037.65 as the unpaid principal balance as of November 30, 2012;
- (b) \$ 602.15 as unpaid interest on the principal balance at 1% per annum through November 30, 2012;
- (c) \$ 1,507.71 as the unpaid administrative costs and penalties as of November 30, 2012; and,
- (d) interest on said principal balance from December 1, 2012 at 1% per annum until paid.

Sec’y. Stat., ¶ 4; Ex. B, *Porter Decl.*, ¶ 4.

Pursuant to 31 C.F.R. § 285.11 (e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated November 7, 2012 was sent to Petitioner. *Sec’y. Stat.*, ¶ 5; *Porter Decl.*, ¶ 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; *Porter Decl.*, ¶ 6. To date, “Petitioner has not entered into a written repayment agreement in response to the Notice.” *Id.*

“Based on a review of Petitioner’s weekly pay statement for the period ending December 8, 2012, the Secretary, after accounting for allowable deductions, proposes a weekly repayment schedule of \$120.85 or 15% of Petitioner’s disposable pay.” *Sec’y. Stat.*, ¶ 7.

Discussion

Petitioner does not deny that he owes the subject debt but instead claims that the proposed garnishment amount would create a financial hardship. *Petitioner’s Request for Hearing*, “*H’rg Req.*,” filed December 10, 2012. Petitioner failed to produce the documentary evidence that was necessary to further substantiate his claim of financial hardship, despite being ordered by the Court on three occasions to comply accordingly. *See Notice of Docketing; Order for Documentary Evidence*, dated February 4, 2013; *Order to Show Cause*, dated March 1, 2013.

¹ Kathleen Porter is Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center.

The Secretary states that the debt in the amount claimed is past due and legally enforceable. As support, the Secretary provides a copy of the Note signed by Petitioner that shows Petitioner had agreed to be "fully and personally obligated to pay the full amount owed...." *Sec'y. Stat.*, Ex. A, ¶ 9. While the language of the Note proves that Petitioner remains legally obligated to pay the alleged debt, there is no evidence in the record that shows that the proposed wage garnishment amount would create a financial hardship for Petitioner. Without such evidence, this Court finds that Petitioner's claim of financial hardship fails for lack of proof.

Petitioner also has expressed a willingness to work out a payment plan to pay back the loan to HUD. (*H'rg. Req.*, Attached Congressional TACT Correspondence.) While Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

As a final point, Rule 26.4(c) 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.*

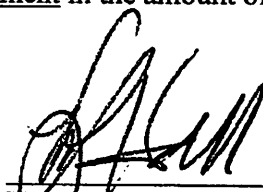
(Emphasis added).

Accordingly, I find that, pursuant to Rule 26.4(c), 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 the amount of \$120.85 per week, or 15% of Petitioner's disposable pay.



Vanessa L. Hall
Administrative Judge