

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

In the Matter of:

John Hart,

Petitioner

HUDOA No: 13-VH-0086-AG-036
Claim No. 2010262520B

August 14, 2013

DECISION AND ORDER

On February 14, 2013, John Hart ("Petitioner") filed a hearing request concerning 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 February 19, 2013, 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 March 13, 2013, the Secretary filed his *Statement* along with documentation in support of his position. On March 25, 2013, Petitioner filed a request for settlement. (*Letter from Petitioner*, ("Ptr. March Ltr."), filed March 25, 2013). This case is now ripe for review.

Background

On or about July 18, 1996, Petitioner executed and delivered a Retail Installment Contract-Security Agreement ("Note") to Victory Homes Inc. in the amount of \$34,552.00, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (*Secretary's Statement* ("Sec'y Stat."), ¶ 2, filed March 13, 2013; Ex. A, Note.) Contemporaneously, on July 18, 1996, the Note was assigned by Victory Homes Inc. to Oakwood Acceptance Corp. (See *Sec'y Stat.*, ¶ 3; Note, p. 1-2.) Subsequent to this assignment, Oakwood Acceptance Corp. was defaulted as an issuer of Mortgage-Backed Securities due to its failure to comply with the Government National Mortgage Association's ("GNMA") Mortgage-Backed Securities Program requirements. (*Sec'y Stat.*, ¶ 4; Ex. B, Declaration of Leslie A. Meaux¹, ("Meaux Decl."), ¶ 4.) Upon default by Oakwood Acceptance Corp., all of its rights, title, and interest in Petitioner's loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Oakwood Acceptance Corp. and GNMA. (*Sec'y Stat.*, ¶ 5; *Meaux Decl.*, ¶ 4.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (*Sec'y Stat.*, ¶ 6; *Meaux Decl.*, ¶ 5.)

The Secretary alleges that Petitioner failed to make payment at the place and in the amount specified in the Note. As a result, the Secretary contends that Petitioner is indebted to HUD in the following amounts:

- a) \$20,680.13 as the unpaid principal balance; and,
- b) interest, penalties, and administrative costs on the principal balance from March 6, 2013, until paid.

(*Sec'y Stat.*, ¶ 7; *Meaux Decl.*, 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Garnishment Notice"), dated May 20, 2008, was mailed to Petitioner, in accordance with 31 C.F.R. 285.11(e). (*Sec'y Stat.*, ¶ 8; *Meaux Decl.*, ¶ 7.) The Garnishment Notice afforded Petitioner the opportunity to enter into a written repayment agreement, as required by 31 C.F.R. 285.11(e)(2)(ii). (*Sec'y Stat.*, ¶ 9; *Meaux Decl.*, ¶ 7.) Petitioner has not entered into a written repayment agreement. (*Sec'y Stat.*, ¶ 9; *Meaux Decl.*, ¶ 7.)

The Secretary proposes a repayment schedule of 10% of Petitioner's disposable pay. (*Sec'y Stat.*, ¶ 11; *Meaux Decl.*, ¶ 9.)

Discussion

The Secretary has the initial burden of proving the amount and existence of the debt. 31 C.F.R. § 285.11(f)(8)(i). Thereafter, Petitioner, must present 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).

¹ Leslie A. Meaux is the Director of the Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association at HUD.

In this case, Petitioner claims that the terms of the repayment schedule in the amount proposed by the Secretary would cause financial hardship. (*Petitioner's Hearing Request*, (*Pet'r's Hrg. Req.*), filed February 14, 2013.) More specifically he claims that "15% is being garnished... and it is really putting us in a bind." (*Pet'r's Hr'g Req.*) As support Petitioner filed a copy of his Consumer Debtor Financial Statement in support of his claim for financial hardship. (*See Pet'r's Hr'g. Req.*, Attachment, filed February 14, 2013.)

The Secretary requests, on the other hand, that the Court finds that the subject debt is legally enforceable and past due, and then authorizes a repayment schedule of 10% of the Petitioner's disposable pay to satisfy the alleged debt. (*See Sec'y Stat.*, 11.) As support, the Secretary filed a copy of the Note signed by Petitioner, along with a sworn declaration from the Director of the Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association at HUD. (*See Sec'y Stat.*, Ex. A, Ex. B.) An examination of the language in both documents shows that Petitioner not only agreed to pay the alleged debt but that Petitioner also agreed, upon default, to be responsible for the payment of the debt. *Id.*

While financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it, the existence of financial hardship requires a mitigation of the amount of the garnishment allowable by law. *See David Agerton*, HUDOA No. 09-H-NY-AWG143 at 3, (November 20, 2009). Although the Court can credit certain household expenses as proof of financial hardship, bills and receipts must be submitted to further support such allegations. Here, Petitioner failed to submit such proofs of payment and only submitted his Consumer Debtor Financial Statement that listed the expenses he claimed. A mere listing of expenses is insufficient as proof of financial hardship. Accordingly, the Court finds that Petitioner has failed to meet his burden of proof for lack of sufficient evidence. *See Troy Williams*, HUDOA No. 09-M-CH-A WG52, (June 23, 2009) ("assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.")

Next, on March 25, 2013, Petitioner filed a request for settlement. (*Ptr. March Ltr.*) 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 (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).

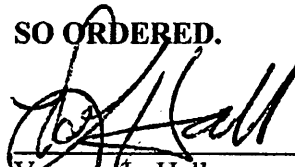
Accordingly, I find that, pursuant to Rule 26.4 (d), Petitioner's non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

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**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 10% of the Petitioner's disposable pay. It is

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause. Should a Decision and Order upon Reconsideration be issued it shall be considered final unless a party timely appeals the determination in accordance with 24 C.F.R. § 26.26 (2012). Any party may request, in writing, Secretarial review of the determination within 30 days after the hearing officer issues the determination in accordance with § 26.26 of this part.