

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

In the Matter of:

Jesse Fonseca,

Petitioner.

HUDOHA 13-VH-0100-AG-043
Claim No. 770010038-0A

September 6, 2013

DECISION AND ORDER

On March 25, 2013, Jesse Fonseca ("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 March 27, 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 April 24, 2013, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has not filed any additional documentary evidence in support of his position beyond his submission of his Debt Resolution Program Financial Statement. This case is now ripe for review.

Background

On or about October 9, 1985, Jesse Fonseca ("Petitioner") executed and delivered to Commercial National Bank a Note in the amount of \$6,099.24. (*Secretary's Statement* ("Sec'y. Stat.") ¶ 2, Ex. 1.) This Note was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. *Id.* Petitioner failed to make payments as agreed in the Note which was subsequently assigned to HUD. (*Sec'y. Stat.*, ¶ 4; Ex. 2, *Dillon Decl.*,¹ ¶ 2.)

The Secretary has attempted to collect the amount due under the Note, but Petitioner remains in default. (*Sec'y. Stat.*, ¶ 5; *Dillon Decl.*, ¶ 4.) As a result, Petitioner is indebted to the Secretary in the following amounts:

- (a) \$3,455.67 as the unpaid principal balance as of February 28, 2013;
- (b) \$3,159.32 as unpaid interest on the principal balance at 7.0% per annum through February 28, 2013; and,
- (c) interest on said principal balance from March 1, 2013 at 7.0% per annum until paid.

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

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated January 15, 2013 was mailed to Petitioner. (*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 by the February 16, 2013 deadline as stated in the January 15, 2013 Notice. *Id.*, ¶ 6.

A Wage Garnishment Order dated March 7, 2013 was issued to Petitioner's employer, Union Pacific Railroad. (*Sec'y. Stat.*, ¶ 7; *Dillon Decl.*, ¶ 7, Ex. A.)

Petitioner provided a copy of his biweekly pay statement for the pay period ending February 15, 2013. (*Dillon Decl.*, ¶ 8, Ex. B.) Based on this pay statement, the administrative wage garnishment authorized at 15% of Petitioner's disposable pay would result in a biweekly repayment schedule under such garnishment order equal to \$145.09. *Id.*

However, the Secretary has accepted Petitioner's request to reduce the wage garnishment to \$100 biweekly. (*Sec'y. Stat.*, Ex. 2, *Dillon Decl.* ¶ 9.) The Secretary's proposed repayment schedule is now \$100.00 biweekly in accordance with the agreement between HUD and the Petitioner.

Discussion

In this case, both parties agree that the debt alleged against Petitioner is past due and legally enforceable and, as a result, Petitioner is legally obligated to pay the amount claimed by

¹ Brian Dillon is the Director of the Asset Recovery Division of HUD's Financial Operations Center.

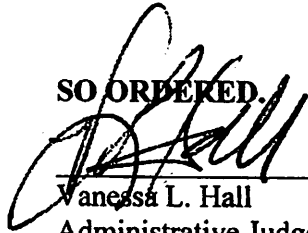
the Secretary. For that reason, the parties have reached an agreement to reduce the wage garnishment to \$100.00 biweekly in satisfaction of the debt that is the subject of this proceeding.

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 biweekly amount of \$100.00, the amount agreed to by the Secretary and Petitioner. It is

SO ORDERED.



Vanessa L. Hall
Administrative Judge