

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

In the Matter of:

FRED C. WATTS,

Petitioner

HUDOHA No. 13-VH-0124-AG-053

Claim No. 7059546 First Beneficial 9248

November 1, 2013

DECISION AND ORDER

Petitioner was notified, pursuant to 31 U.S.C. §§ 3716 and 3720A, that the Secretary of the U.S. Department of Housing and Urban Development ("HUD") intended to seek administrative offset of any federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD. On May 29, 2013, Petitioner requested a hearing concerning the existence, amount, or enforceability of the alleged debt.

Applicable Law

The administrative judges of this Court, in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81, have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. 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 the 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 May 29, 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 June 24, 2013, the Secretary filed his *Statement* along with documentation in support of his position that the alleged debt is past due and enforceable. To date, Petitioner has failed to file any documentary evidence in support of his position that the alleged debt has been paid in full, despite being ordered by this Court on three occasions to do so. (*Notice of Docketing*, dated May 28, 2013; *Order for Documentary Evidence*, dated July 18, 2013; and *Order to Show Cause*, dated August 12, 2013.) This case is now ripe for review.

Background

On March 24, 2000, Petitioner executed and delivered a Promissory Note ("Note") to First Beneficial Mortgage Corporation ("First Beneficial") the amount of \$48,287.00, 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 June 24, 2013; Ex. A, Note.)

First Beneficial was defaulted as an issuer of Mortgage Backed Securities ("MBS") due to its failure to comply with the Government National Mortgage Association's ("GNMA") MBS program requirements. (*Sec'y Stat.*, ¶3; Ex. B, *Declaration of Leslie A. Meaux* ("Meaux Decl."), ¶4.) Upon default by First Beneficial, all of its rights, titles, and interest in Petitioner's loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between First Beneficial and GNMA. (*Sec'y Stat.*, ¶4; *Meaux Decl.*, ¶4.)

As GNMA (a division of HUD) is the holder of the Note, the Secretary has made efforts to collect this debt from Petitioner; but Petitioner remains in default. (*Sec'y Stat.*, ¶¶5, 6; *Meaux Decl.*, ¶5.) The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$46,170.22 as the unpaid principal balance;
- (b) \$20,076.32 as the unpaid interest on the principal balance at 9.50% per annum through June 20, 2013;
- (c) \$2,744.16 as the administrative cost;
- (d) \$13,955.81 as the penalty; and
- (e) interest on said principal balance 9.50% per annum from June 20, 2013 until paid.

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

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated April 19, 2013, was mailed to Petitioner. (*Sec'y Stat.*, ¶7; *Meaux Decl.*, ¶7.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under mutually agreeable terms. (*Sec'y Stat.*, ¶8; *Meaux Decl.*, ¶7.) Petitioner did not enter into a repayment agreement or pay the debt in full based on the April 19, 2013 Notice. (*Sec'y Stat.*, ¶6, 8; *Meaux Decl.*, ¶6.)

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

Discussion

Petitioner claims he does not owe the debt that is the subject of his proceeding because the issuer of his loan was defaulted. More specifically, Petitioner states that "the mortgage co. was closed by F.B.I. They took all paper work. No one had title. Spartanburg. Co. sold it for back taxes to someone else." (*Petitioner's Hearing Request*, (*H'rg. Req.*), filed May 29, 2013.) Beyond Petitioner's allegation challenging the existence of the debt he has failed, to date, to produce documentary evidence in support of his position.

The Secretary claims, on the other hand, that Petitioner's debt is past due and legally enforceable. The Secretary contends, GNMA became a "rightful holder of Petitioner's loan . . . [and] entitled to avail itself of all available remedies in order to obtain repayment of this obligation." (*Meaux Decl.*, ¶5.) The Secretary further states that "each borrower [Petitioner] is solely responsible per the Promissory Note signed by Petitioner," and that "[t]he signed documents show the borrower acknowledged responsibility for the debt and promised to pay." (*Meaux Decl.*, ¶8.) As support, the Secretary produced a copy of the Note signed by Petitioner, as well as the sworn declaration of GNMA at HUD acknowledging the validity of the amount claimed to be owed by Petitioner. (*Sec'y Stat.*, Ex. A, Ex. B.)

Here, because Petitioner failed to provide the necessary documentary evidence to show that the alleged debt was non-existent, Petitioner's claim fails for lack of proof. 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)). In the absence of evidence from the Petitioner to either refute or rebut the evidence presented by the Secretary, the Court finds, based on the record of the proceedings, Petitioner remains legally obligated to pay the full amount of the debt in the amount claimed by the Secretary.

As a final point, Rule 26.4(c) of Title 24 of the Code of Federal Regulation 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).

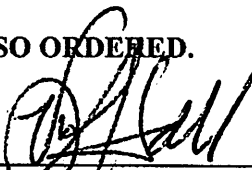
Accordingly, I find that, pursuant to Rule 26.4(c), Petitioner's non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**.

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