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

In the Matter of: **Benjamin L. Spencer II** Petitioner.	HUDOHA 13-VH-0126-AG-055 Claim No. 780708464 November 7, 2013

DECISION AND ORDER

On May 29, 2013, Benjamin L. Spencer II (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 (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). Thereafter, Petitioner 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 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 7, 2013, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file sufficient documentary evidence in support of his claim of financial hardship, or in response to the orders issued by this Court. This case is now ripe for review.

Background

On August 6, 2001, Petitioner executed and delivered a Home Improvement Installment Contract and Promissory Note (Note) to Appleby Systems, Inc. in the amount of $6,000.00, 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 June 7, 2013; Ex. A, Note. Contemporaneously, on October 8, 2001, the Note was assigned by Appleby Systems, Inc. to United National Bank. *Sec'y. Stat.*, ¶ 3, Note at p. 5.

Petitioner failed to make payment on the Note as agreed so consequently, in accordance with 24 C.F.R. § 201.54, United National Bank assigned the Note to the United States of America. *Sec'y. Stat.*, ¶ 4; Ex. B, Assignment; Ex. C, *Declaration of Brian Dillon* [1](*Dillon Decl.*), ¶ 3. The Secretary is the holder of the Note on behalf of the United States. Id.

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. *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) $ 2,947.79, as the unpaid principal balance as of May 31, 2013;
(b) $ 508.44 as unpaid interest on the principal balance at 3% per annum through May 31, 2013;
(c) $1,591.95 as the unpaid penalties and administrative cost as of May 31, 2013; and,
(d) interest on said principal balance from June 1, 2013 at 3% per annum until paid.

Id.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (Notice) dated May 3, 2013 was sent 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. Id., ¶ 7. Petitioner did not enter into a written repayment agreement or pay the debt in full in response to the Notice. Id. at ¶¶ 6, 7.

Consequently, "on June 3, 2013, the U.S. Department of the Treasury (Treasury) issued a Wage Garnishment Order to Petitioner's employer. Id. at ¶ 8. Based on the issuance of the Wage Garnishment Order, HUD has received 41 payments totaling $11,283.41. HUD attempted to obtain a copy of Petitioner's most recent pay statement. However, to date, Petitioner has not provided a copy of her pay statement to HUD. *Sec'y. Stat.*, ¶ 9; *Dillon Decl.*, ¶ 8. Since current garnishment amounts vary, the Secretary's proposed repayment schedule is 15% of Petitioner's monthly disposable pay. Id.

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

Discussion

Petitioner claims that the proposed garnishment amount would create a financial hardship. Petitioner submitted a copy of her Consumer Debtor Financial Statement. However to date, Petitioner has failed to produce documentary evidence that would sufficiently persuade the Court that the proposed repayment scheduled would create a financial hardship for her, despite being ordered by this Court to do so. See *Notice of Docketing,* p. 2; *Order for Documentary Evidence*, dated May 23, 2013; *Order to Show Cause*, dated June 19, 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, p.1; Ex. C, *Dillon Declaration*, ¶ 4. It is evident from the language of the Note that Petitioner agreed with the lender that she would "pay Seller the 'unpaid balance' as listed under 'Itemization of Amount Financed.'" *Sec'y. Stat.*, Ex. A, Note, p. 1, PROMISE TO PAY.

Here, since Petitioner has agreed to pay any "unpaid balance" due but has failed to produce any sufficient and credible proof that would convince the Court of her claim of financial hardship, the Court has determined that Petitioner remains legally obligated to pay the subject debt. Because the Secretary has successfully met his burden of proof, the Court also finds that the alleged debt is past due and legally enforceable against Petitioner. This Office has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and 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)). Therefore, the Court finds Petitioner's claim fails for lack of proof.

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**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount equal to 15% of Petitioner's monthly 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.