

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

In the Matter of:

Shawn Conner,

Petitioner.

HUDOHA 13-VH-0151-AG-067
Claim No. 721006855

February 10, 2014

DECISION AND ORDER

On August 12, 2013, Shawn Conner (“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 “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 August 14, 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, 1.) On September 11, 2013, the Secretary filed his *Statement* along with documentation in support of his position. On September 27, 2013, this Court issued an *Order for Documentary Evidence*, requiring Petitioner to file documentary evidence in support of his position. On October 24, 2013, this Court issued an *Order to Show Cause*. 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 or about May 25, 2006, Petitioner executed and delivered a Promissory Note ("Note") to the Secretary in the amount of \$11,854.28. (*Secretary's Statement* ("Sec'y. Stat."), ¶ 2, filed September 11, 2013.) The Note secured a subordinate mortgage held by the Secretary. (*Sec'y. Stat.*, ¶ 2; Ex. 1, Note, ¶ 2.) Seeking to provide foreclosure relief, HUD advanced funds to Petitioner's Federal Housing Administration (FHA) insured mortgage lender to bring Petitioner's primary mortgage current. (*Sec'y Stat.*, ¶ 3; Ex. 2, *Declaration of Gary Sautter*¹ ("*Sautter Decl.*"), ¶ 3, dated August 21, 2013.) In exchange for such funds, Petitioner executed the Note in favor of the Secretary. (*Sec'y Stat.*, ¶ 3; *Sautter Decl.*, ¶ 4.)

On or about October 25, 2010, the FHA mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated the mortgage was paid in full. (*Sec'y Stat.*, ¶ 4; *Sautter Decl.*, ¶ 4.) By the terms of the Note and upon such occurrence, payment of Petitioner's subordinate mortgage and Note became due and owing. (*Sec'y Stat.*, ¶ 4; Note, ¶ 4; *Sautter Decl.*, ¶ 4.)

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

- (a) \$7,523.71 as the unpaid principal balance as of July 30, 2013;
- (b) \$0.00 as the unpaid interest on the principal balance at 1.0% per annum through July 30, 2013; and
- (c) Interest on said principal balance from July 30, 2013, at 1.0% per annum until paid.

(*Sec'y. Stat.*, ¶ 6; *Sautter Decl.*, ¶ 5.)

A Notice of Intent to Initiate Wage Garnishment Proceedings, dated September 19, 2011, was mailed to Petitioner. (*Sec'y Stat.*, ¶ 7; *Sautter Decl.*, ¶ 6.) In accordance with 31 C.F.R. 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement. (*Sautter Decl.*, ¶ 7.) Petitioner did not enter into a written repayment agreement with HUD, and a Wage Garnishment Order was issued to Petitioner's employer on or about October 20, 2011. (*Sec'y Stat.*, ¶ 8; *Sautter Decl.*, ¶¶ 8, 10.)

The Secretary has proposed a repayment schedule of \$150.00 bi-weekly. (*Sec'y. Stat.*, ¶ 12; *Sautter Decl.*, ¶ 12.)

Discussion

Petitioner does not deny that the alleged debt is owed but instead claims that the wage garnishment amount would create a financial hardship. Petitioner states he "can't pay bills," is "being force[d] to file bankruptcy," and seeks to "reduce payment from [the] last time."

¹ Gary Sautter is Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

(Petitioner's Hearing Request ("Pet'r's H'rg. Req."), file August 12, 2013). Petitioner has failed, to date, to produce any documentary evidence that would sufficiently persuade the Court that his allegations are valid, despite being ordered by this Court to do so. (*Notice of Docketing; Order for Documentary Evidence*, dated September 27, 2013; and *Order to Show Cause*, dated October 24, 2013.) The record shows, however, that while Petitioner failed to produce documentary evidence in support of his claim, he has since accepted the Secretary's reduced garnishment amount of \$150.00 bi-weekly.

The Secretary has met his burden of proof that the alleged debt is past due and legally enforceable against Petitioner and now seeks authorization of his proposed repayment schedule for Petitioner. (*Sec'y. Stat.*, ¶ 12; *Sautter Decl.*, ¶ 12.) 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 who substantiates the debt amount owed by Petitioner. (*Sec'y. Stat.*, ¶ 6; Attached Note; *Sautter Decl.*, ¶ 5.) It is evident from the Note signed by Petitioner that he agreed to pay the lender "all of the amounts owed under this Note." (*Sec'y. Stat.*, Attached Note, ¶ 7).

However, while the Secretary has successfully proven that the alleged debt is past due and legally enforceable, he also has considered Petitioner's current financial situation. Upon consideration of Petitioner's financial circumstances, the Secretary has agreed that a bi-weekly rate of \$150.00 per pay period is sufficient until the subject debt is paid in full. (*Sec'y. Stat.*, ¶ 12; Ex. A, *Petitioner's Email Response to HUD*, ("Pet'r's Email"), dated April 13, 2012.)

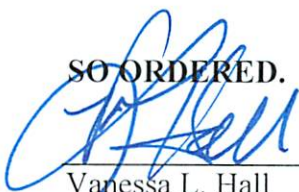
Accordingly, I find that, consistent with the terms of the agreement reached by the parties, Petitioner shall pay the subject debt by means of an administrative wage garnishment in the amount of \$150.00 bi-weekly.

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 an amount equal to \$150.00 bi-weekly as agreed. 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.