

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

In the Matter of:

Thomas J. McCoy,

Petitioner.

HUDOHA 13-VH-0184-AG-080
Claim No. 780715980

March 27, 2014

DECISION AND ORDER

On August 22, 2013, Thomas J. McCoy (“Petitioner”) filed a *Hearing Request* concerning a wage garnishment order sought by the Secretary relating to a debt owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Government”). 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 federal government.

Applicable Law

The administrative judges of this Court are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if such action is contested by a debtor. 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 both the existence as well as the amount of the alleged debt. 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 Background

Pursuant to 31 C.F.R. § 285.11(f) (4), 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*”), dated September 30, 2013.) On September 27, 2013, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to respond to the Orders issued by this Court to submit documentary evidence in support of his claim that all or part of the alleged debt in this case is not past due or legally enforceable. (*Notice of Docketing; Order for Documentary Evidence*, November 13, 2013; *Order to Show Cause*, December 6, 2013.) This case is now ripe for review.

Background

On March 15, 2006, Petitioner executed and delivered a Retail Installment Contract-Security Agreement (“Note”) to Luv Greenville a/k/a CMH Homes, Inc., in the amount of \$41,149.60, which was insured against nonpayment by the Secretary, pursuant to Title 1 of the

National Housing Act. *Secretary's Statement* ("Sec'y Stat."), ¶ 2, filed August 7, 2013; Ex. A, Note. Luv Greenville assigned the Note to Vanderbilt Mortgage and Finance, Inc. *Sec'y Stat.*, ¶ 3. Consequently, and in accordance with 24 C.F.R. § 201.54, Vanderbilt Mortgage and Finance, Inc. assigned the Note to the United States of America. *Sec'y Stat.*, ¶ 4; Ex. B, Assignment; *Declaration of Brian Dillon*¹ ("Dillon Decl."), ¶ 3, dated September 27, 2013. The Secretary is the holder of the Note on behalf of the United States of America. *Sec'y Stat.*, ¶ 4.

The Secretary has attempted to collect this debt from Petitioner, but has not been successful. *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) \$19,976.97 as the unpaid principal balance as of August 31, 2013;
- (b) \$3,180.53 as the unpaid interest on the principal balance at 3% per annum through August 31, 2013;
- (c) \$5,142.27 as the unpaid penalties and administrative cost as of August 31, 2013; and
- (d) Interest on said principal balance from September 1, 2013 at 3% per annum until paid.

Sec'y Stat., ¶ 5; *Dillon Decl.*, ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated August 22, 2013, was sent to Petitioner. *Sec'y Stat.*, ¶ 6; *Dillon Decl.*, ¶ 5. Pursuant to 31 C.F.R. § 285.11(e) (2) (ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms, but as of the date of this Decision has failed to do so. *Sec'y Stat.*, ¶ 7; *Dillon Decl.*, ¶ 7.

The Secretary proposes a repayment schedule of \$146.76 on a bi-weekly basis or 15 percent of the Petitioner's disposable income as allowed by 31 C.F.R. § 285.11(i) (2) (A). *Sec'y Stat.*, ¶ 8; *Dillon Decl.*, ¶ 8.

Discussion

Pursuant to 31 C.F.R. § 285.11(f) (8) (ii), Petitioner may "present by a preponderance of the evidence that all or part of the alleged debt is unenforceable or not past due." Here, Petitioner contends that he does not owe the full amount of the debt and disputes the terms of the proposed garnishment due to hardship, claiming his "wife left [him] six months after marriage" and he "paid as long as [he] possibly could." *Petitioner's Hearing Request*, ("Hearing Request"), dated August 22, 2013.

Beyond merely alleging the possibility that the proposed garnishment would cause a financial burden, Petitioner has failed to file documentary evidence that would otherwise prove the likelihood of financial hardship occurring, despite being ordered by the Court to produce such evidence. *Notice of Docketing*; *Order for Documentary Evidence*; *Order to Show Cause*. This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to

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

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)). As a result, Petitioner has failed to meet his burden of proof and thus I find that Petitioner’s claim of financial hardship fails for want of proof.

On the other hand, the Secretary has successfully met his burden of proof that the subject debt exists and is past due and legally enforceable. *Sec’y. Stat.*, Exhibits A-C. As support, the Secretary produced a copy of the Note signed by Petitioner, along with a copy of a sworn declaration from the Director of the Asset Recovery Division of HUD’s Financial Operations Center who is responsible for monitoring collection of defaulted loans assigned to the Secretary of HUD under the Title I Insurance Program. *Sec’y. Stat.*, Exhibit A, B; *Dillon Decl.*, ¶ 3-4. The Secretary provided such evidence not only to substantiate that the alleged debt exists but also to support the current amount owed by Petitioner as that claimed by the Secretary. *Sec’y. Stat.*, Exhibit C, *Dillon Decl.* ¶ 4. Because Petitioner has failed to provide any evidence that either refutes or rebuts the evidence presented by the Secretary, the Court again finds that Petitioner’s claim fails for want 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**. 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 \$146.76 bi-weekly or 15% of Petitioner’s disposable pay.

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.