

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

In the Matter of:

ROBERT D. THACKER,

Petitioner

HUDOHA No. 14-AM-0003-AG-003
Claim No. 0888867 Oak 9249

July 24, 2014

DECISION AND ORDER

On August 22, 2013, Robert D. Thacker ("Petitioner") was notified that pursuant to 31 C.F.R. § 285.11(e) and 31 U.S.C. § 3720D, the Secretary of the U.S. Department of Housing and Urban Development ("HUD") intended to garnish the disposable pay of Petitioner in order to satisfy Petitioner's alleged debt to HUD.

On September 5, 2013, Petitioner requested a hearing concerning the proposed administrative wage garnishment. 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. The Office of Hearings and Appeals has been designated to conduct a hearing to determine whether the debt is legally enforceable. 31 C.F.R. § 285.11. 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(f)(8)(i). In addition, Petitioner has been afforded the opportunity to 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.* As a result of Petitioner's hearing request, referral of the debt to the U.S. Department of the Treasury for the administrative wage garnishment was temporarily stayed by the Court on October 21, 2013, until the issuance of a written decision by the Administrative Judge. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated October 21, 2013.)

Background

On or about February 16, 1996, Petitioner executed and delivered a Retail Installment Contract-Security Agreement ("Note") to Oakwood Acceptance Corporation in the amount of \$25,073.89. (Secretary's Statement ("Sec'y Stat.") ¶ 2, filed December 18, 2013; Ex. B, Note.)

The Note was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Sec'y Stat. ¶ 2.)

As a result of its failure to comply with the Government National Mortgage Association's ("GNMA") Mortgage-Backed Securities program requirements, Oakwood Acceptance Corporation was defaulted as an issuer of Mortgage-Backed securities. (Sec'y Stat. ¶ 4; Declaration of Leslie A. Meaux¹ ("Meaux Decl.") ¶ 4.) Petitioner's loan was then assigned to GNMA in accordance with the Guarantee Agreement between Oakwood Acceptance Corporation and GNMA (Sec'y Stat. ¶ 5; Meaux Decl. ¶ 4.) Petitioner failed to make payment on the Note as agreed. (Sec'y Stat. ¶ 7; Meaux Decl. ¶ 6.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. (Sec'y Stat. ¶ 7; Meaux Decl. ¶ 6.) The Secretary contends that Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$8,675.38 as the unpaid principal balance; and;
- (b) Interest, penalty, and administrative costs on said principal balance until paid.

(Sec'y Stat. ¶ 7.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated September 23, 2013 was mailed to Petitioner. (Sec'y Stat. ¶ 8, Meaux Decl. ¶ 7.) Petitioner was afforded the opportunity to enter into a written repayment agreement under mutually agreeable terms in accordance with 31 C.F.R. § 285.11(e). However, Petitioner did not enter into a repayment agreement or pay the debt in full in accordance with the September 23, 2013 Notice. (Sec'y Stat. ¶ 9.)

Discussion

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)(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). Additionally, 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.

As evidence of Petitioner's indebtedness, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note signed by Petitioner and the sworn declaration of the Monitoring Director of the Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association ("Ginnie Mae") within HUD. (See Sec'y Stat., Ex. A, Ex. B.) Accordingly, the Court finds the Secretary has met his initial burden.

Petitioner disputes the existence of the debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), dated September 5, 2013.) Specifically Petitioner states that he does not owe the debt

¹ Leslie A. Meaux is the Monitoring Director of the Mortgage-Backed Securities Monitoring Division of GNMA.

because, “it was given to ex-wife and the debut [sic] by a Judge in court of law.” (Pet’r’s Hr’g Req.) However, Petitioner fails to file any documentary evidence in support of this assertion.

On October 21, 2013, the Court issued a *Notice of Docketing, Order, and Stay of Referral* (“Notice of Docketing”) ordering Petitioner to “file documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due” on or before December 9, 2013. That deadline was extended to January 10, 2014 pursuant to a Ruling and Order Granting Extension of Time issued on November 25, 2013.² Petitioner failed to file his documentary evidence by January 10, 2014. As a result, the Court issued an *Order for Documentary Evidence* on January 27, 2014, ordering Petitioner to file his evidence by February 20, 2014. This latter order notified Petitioner that, “[f]ailure to comply with this Order may result in the imposition of sanctions to include entry of judgment in favor of the opposing party in this case, a decision based on documents of record, or other sanctions deemed necessary and appropriate by the Administrative Judge.” (emphasis in original) (*Order for Documentary Evidence*, issued January 27, 2014.) Petitioner again failed to provide the necessary evidence.

To date, Petitioner has failed to file any documents in support of his claim that he does not owe the debt in this case. The Court has consistently maintained that “assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Petitioner has therefore failed to meet his burden of proof. Based on the foregoing, I find that Petitioner is liable for the debt in the amount alleged by the Secretary.

ORDER

For the reasons set forth above, the *Order*, dated October 21, 2013, imposing the stay of referral of this matter to the U.S. Department of 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 the amount of ten (10) percent of Petitioner’s disposable income.

SO ORDERED.



H. Alexander Manuel
Administrative Judge

² The Ruling and Order Granting Extension of Time was responsive to the Secretary’s request for additional time to file his documentary evidence. Although Petitioner did not request an extension to file documentary evidence, his deadline was extended *sua sponte*.