

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

In the Matter of:

**CARLOS LEOS,**

Petitioner.

HUDOHA 14-AM-0005-AG-005  
Claim No. 5307778 LendServ 9233

Judge H. Alexander Manuel

May 19, 2014

**DECISION AND ORDER**

On or about January 20, 2011, Petitioner, Carlos Leos 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 Petitioner’s disposable pay to satisfy his alleged debt to HUD.

On or about September 17, 2013, Petitioner filed a hearing request with respect to the Secretary’s proposed administrative wage garnishment of his disposable pay, which is based on an alleged debt that Petitioner owes to HUD. 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 the existence and the amount of the alleged debt. 31 C.F.R. 285(f)(8)(i). 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 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 April 4, 1990, Petitioner executed and delivered a Manufactured Home Retail Sales Contract and Security Agreement (“Note”) to Newven Homes, Inc. in the amount of \$32,912.57. (Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed December 6, 2013; Ex. 1, Note.) Subsequently, the Note was assigned by Newven Homes, Inc. to Lender Service, Inc. (Sec’y Stat. ¶ 2.) The Note was insured against nonpayment by the Secretary, pursuant to a Guaranty Agreement between Lender Service, Inc. and Ginnie Mae. (Sec’y Stat. ¶ 3.) Petitioner failed to make payment on the Note as agreed. (Sec’y Stat. ¶ 4.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. (Sec'y Stat. ¶ 5, Declaration of Leslie A. Meaux ("Meaux Decl.") ¶ 6.) The Secretary contends that Petitioner is justly indebted to the Secretary in the following amounts:

(a) \$21,735.70 as the unpaid principal balance.

(Sec'y Stat. ¶ 7, Meaux Decl. ¶ 6.)

*A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings* ("Notice") dated January 20, 2011 was mailed to Petitioner. (Sec'y Stat. ¶ 6, 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 based on the January 20, 2011 Notice. (Sec'y Stat. ¶ 8, Meaux Decl. ¶ 8.)

### **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(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, the sworn declaration of the Monitoring Director of the Government National Mortgage Association within HUD, and the reassignment of contract between Petitioner and Lender Service, Inc. (*See* Sec'y Stat., Ex. 1, Ex. 2, Ex. 3.) Accordingly, the Court finds the Secretary has met his initial burden of proof.

Petitioner does not deny that he owes the alleged debt in this case. However, Petitioner disputes the amount of the debt. (Petitioner's Hearing Request, received September 17, 2013, ("Pet'r's Hr'g Req.")). In his Hearing Request, Petitioner claims that "My wife & I have a pay agreement we are unable to make payments & have my wages garnished (sic)." Petitioner, therefore, requested that the Administrative Wage Garnishment be stopped. (Pet'r's Hr'g Req.) However, Petitioner does not provide documentary evidence to prove that he does not owe the full amount of the debt claimed by the Secretary. (Pet'r's Hr'g Req.) Indeed, Petitioner has filed no documentary evidence in this case beyond the filing of his Hearing Request in support of his allegations.

The Notice of Docketing and the Order for Documentary Evidence, dated January 13, 2014, ordered Petitioner to file documentary evidence to prove that he did not owe the alleged debt in the amount claimed by the Secretary, or to prove that the proposed repayment schedule by HUD would impose a financial hardship upon Petitioner. Petitioner failed to comply with both orders.

Having filed no documentary proof to demonstrate financial hardship, the Court further finds that Petitioner has not demonstrated that repayment of the debt according to the Secretary's proposed repayment schedule would create a financial hardship for him. See Judith Herrera, HUDOA No. 12-M-CH-AWG27 (July 13, 2012.)

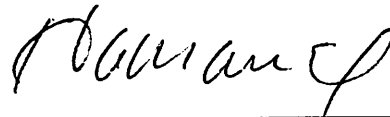
The Court has consistently maintained that "assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable." (Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300, (July 3, 1996))). Accordingly, the Court finds that Petitioner's argument fails for lack of corroborating evidence, and that the debt is past due and enforceable in the amount claimed by the Secretary.

### **ORDER**

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment on October 21, 2013, is **VACATED**. It is

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the full amount authorized by law.

**SO ORDERED.**



---

H. Alexander Manuel  
Administrative Judge