

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

In the Matter of:

ALLAN BRIGHT,

Petitioner.

HUDOHA 14-AM-0069-AG-031
Claim No. 2010245440A

February 27, 2015

DECISION AND ORDER

On December 31, 2010, Allen Bright (“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 Petitioner’s disposable pay to satisfy Petitioner’s alleged debt to HUD.

On December 30, 2013, Petitioner requested a hearing challenging the existence of the debt and the enforceability of the proposed 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. As a result of Petitioner’s hearing request, the Court stayed referral of the debt to the U.S. Department of the Treasury until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral (“Docketing Order”), dated March 13, 2014.)

Background

On April 1, 1993, Petitioner executed and delivered a Retail Installment Contract (“Note”) to Camco Mobile Homes, Inc. in the amount of \$20,074.75. (Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed March 26, 2014; Ex. A, Note.) The Note was contemporaneously assigned to Logan-Laws Financial Corporation (“Logan Laws”). (Sec’y Stat., ¶ 3.) 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.)

Logan Laws was defaulted as an issuer of Mortgage -Backed Securities due to its failure to comply with the Government National Mortgage Association’s (“GNMA’s”) program requirements. (Sec’y Stat., ¶ 4; Ex. B., Declaration of Leslie A. Meaux¹ (“Meaux Decl.”) ¶ 4.)

¹ Leslie Meaux is the Acting Monitoring Director of Ginnie Mae’s Mortgage-Backed Securities Monitoring Division.

Petitioner's loan was then assigned to GNMA in accordance with the Guarantee Agreement between Logan Laws and GNMA (Sec'y Stat., ¶ 5; Meaux Decl., ¶ 4.) Petitioner failed to make payment on the Note as agreed. (Sec'y Stat., ¶ 7.)

HUD's attempts to collect the alleged debt from Petitioner have been unsuccessful. (Sec'y Stat., ¶ 7; Meaux Decl., ¶ 6.) The Secretary contends that Petitioner remains indebted to the Secretary in the following amounts:

(a) \$2,698.82 as the unpaid principal balance;

(Sec'y Stat., ¶ 7; Meaux Decl., ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated December 31, 2010, was mailed to Petitioner. (Sec'y Stat., ¶ 8; Meaux Decl., ¶ 7.) Although Petitioner did not request a hearing until December 2013, HUD did not issue a withholding order, and to date has not garnished any of Petitioner's pay. The Secretary has proposed a repayment schedule of 10% of Petitioner's disposable pay. (Sec'y Stat., ¶ 15; Meaux Decl., ¶ 11.)

Discussion

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, 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). Petitioner may also 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 Acting Monitoring Director of GNMA's Mortgage-Backed Securities Monitoring Division. Accordingly, the Court finds the Secretary has met his initial burden.

Petitioner initially contended that he does not owe the debt because his ex-wife assumed responsibility for the debt pursuant to their divorce decree. A copy of the divorce decree was attached as supporting documentary evidence.

The Secretary counters that the divorce decree does not absolve Petitioner of his responsibility because HUD was not a party to the divorce and Petitioner's ex-wife did not sign the Note.

The Secretary is correct. The divorce decree defines the legal relationship between Petitioner and his ex-wife. It does not alter the relationship between Petitioner and HUD. Petitioner alone signed the Note, and so he alone is responsible for the resultant debt. See Kimberly S. King (Theide), HUDBCA No. 89-4587-L74 (April 23, 1990). Petitioner may choose to pursue legal action against his ex-wife, pursuant to the divorce decree, to recover

monies paid by Petitioner in satisfaction of this obligation. However, he remains liable to HUD for the instant debt. See Michael York, HUDBCA No. 09-H-CH-AWG36, p. 3 (June 26, 2009).

Petitioner also contends that the Secretary's proposed repayment schedule will cause Petitioner severe financial hardship. As support for his claim, Petitioner has provided a financial declaration worksheet from the South Carolina Sixteenth Judicial Circuit, a pay statement, and copies of various bills. (Petitioner's Documentary Evidence ("Pet'r's Doc. Evid."), filed June 6, 2014.)

Disposable income is defined as "that part of the debtor's compensation from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld ... [including] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). Payments for essential monthly household expenses are considered against the disposable income figure prior to determining if a wage garnishment will create a financial hardship. See Carolyn Reed, HUDOA No. 12-M-CH-AWG05 (January 20, 2012).

Based on Petitioner's documentary evidence, he earns an average monthly income of \$2,728.² His monthly deductions consist of: federal income tax, \$318; Social Security/Medicare, \$233; health insurance, \$225; mandatory retirement savings, \$164; and South Carolina state tax, \$148. Petitioner also lists a \$131 deduction as "Other/Miscellaneous" and a \$386 deduction for an "IRS garnishment" that is unrelated to the present proceeding. The "Miscellaneous" deduction cannot be credited because the Court cannot confirm that it is a deduction that is required by law. Petitioner therefore earns \$1,640 in net income per month.

Petitioner has provided verified monthly expenses for: car payment, \$345; mortgage, \$230; utilities, \$141; life insurance, \$72; and telephone service, \$40. Other expenses are claimed, but there is no evidence in the record to substantiate the figures. Petitioner claims monthly expenses in the following amounts: food, \$120; household maintenance, \$40; and clothing, \$20.

This Court has held that credit may be given for certain essential household expenses, despite insufficient documentation, when the "financial information submitted by Petitioner ... [was found to be] generally credible...." Reed, p. 4 (citing Elva and Gilbert Loera, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). The figures claimed by Petitioner are within the general range for such services and expenses. The Court will therefore credit these claims.

Other claims, however, cannot be substantiated or are not creditable. Petitioner claims \$638 in monthly expenses for "auto insurance, taxes, gasoline, and maintenance." Automobile tax and maintenance are not recurring monthly expenses, and so cannot be credited. Petitioner has provided evidence that his car insurance is \$200.82, but he has not shown how much he pays for gasoline on a monthly basis. The Court therefore can only credit \$200.82 as his monthly expense under this category.

² Petitioner's evidence includes either overtime or holiday pay. However, the Court cannot consider these additional earnings without evidence that they are consistently reoccurring income. The figures used here are therefore based on Petitioner's base income.

Additionally, Petitioner asserts the following expenses: installation payments, \$261; and satellite television/internet, \$131. Neither expense can be credited. The Court cannot determine what purchases were made with the credit cards, so it cannot find that the purchases relate to essential and ongoing expenses. Internet and television service is not an essential household expense.

Petitioner's expenses thus amount to \$1,208.82, leaving him with \$431.18 each month. A 10% garnishment would further reduce his monthly balance by \$164, giving him \$267.18 each month. This amount should be sufficient to cover Petitioner's other financial needs. Accordingly, I find that the proposed wage garnishment will not create a financial hardship for Petitioner.

ORDER

For the reasons set forth above, the *Docketing Order* issued March 13, 2014, 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 the amount of 10% of Petitioner's disposable pay.

SO ORDERED.



H. Alexander Manuel
Administrative Judge