

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

In the Matter of:

DARRELL K. TRENT,

Petitioner.

HUDOHA 14-VH-0002-AG-002
Claim No. 780715436

May 19, 2014

DECISION AND ORDER

On October 17, 2013, Darrell K. Trent (“Petitioner”) filed a *Hearing Request*, along with limited documentary evidence, concerning a proposed administrative wage garnishment for 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 U.S. government.

Applicable Law

The Secretary has designated the administrative judges of this Court to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. 24 C.F.R. § 17.81(b). This case 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. Pursuant to 31 C.F.R. § 285.11(f)(8)(i), the Secretary has the initial burden of proof to show the existence and amount of the debt. Thereafter, Petitioner must present by a preponderance of the evidence that no debt exists, the amount of the debt is incorrect, or the terms of the repayment schedule would cause a financial hardship. 31 C.F.R. § 285.11(f)(8)(ii). Furthermore, 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), 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*”), 2, dated October 17, 2013. The documentary evidence Petitioner submitted with his *Hearing Request* was not sufficient as support for his position. To date, Petitioner has failed to file, in response to subsequent Orders issued by this Court, additional documentary evidence that would otherwise support his claim that all or part of the subject debt is not past due or not legally enforceable. *Order for Documentary Evidence*, December 6, 2013; *Order to Show Cause*, February 13, 2014. On November 6, 2013, the

Secretary filed his *Statement* along with documentation in support of his position. This case is now ripe for review.

Background

On August 10, 2002, Petitioner and Kimberly D. Trent executed and delivered to Smith Brothers Builders & Supply Inc., a Home Improvement Retail Installment Contract (“Note”) in the amount of \$12,025.00. *Secretary’s Statement* (“*Sec’y Stat.*”). ¶ 2, filed November 6, 2013; Ex. 1, Note at p. 1. Pursuant to Title I of the National Housing Act, the Note was insured against nonpayment by the Secretary. *Sec’y Stat.*, ¶ 3. After default by Petitioner, the Note was assigned to HUD by South Central Bank, NA. *Sec’y Stat.*, ¶ 4; Ex. 2, *Declaration of Brian Dillon*¹ (“*Dillon Decl.*”), ¶ 3, dated October 24, 2003; Ex. 3, Assignment of Note, dated August 17, 2009.

HUD has attempted to collect on the amount due under the Note, but Petitioner remains in default. *Sec’y Stat.* ¶ 5; *Dillon Decl.*, ¶ 4. As a result, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$6,926.11 as the unpaid principal balance as of September 30, 2013;
- (b) \$1,016.36 as the unpaid interest on the principal balance at 3% per annum through September 30, 2013;
- (c) interest on said principal balance from October 1, 2013 at 3% per annum until paid; and
- (d) \$2,285.06 as the penalties and administrative costs as of September 30, 2013.

Sec’y Stat., ¶ 6; *Dillon Decl.*, ¶ 4.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated August 26, 2013 was mailed to Petitioner. *Sec’y Stat.*, ¶ 7; *Dillon Decl.*, ¶ 5. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD, but did not elect to do so. *Sec’y Stat.*, ¶ 11; *Dillon Decl.*, ¶ 6.

The Secretary made several attempts to obtain Petitioner’s current pay stub, but Petitioner has not provided that information. *Sec’y Stat.*, ¶ 12; *Dillon Decl.*, ¶ 7. Therefore, the Secretary’s proposed repayment schedule is 15% of Petitioner’s disposable income. *Sec’y Stat.*, ¶ 13.

Discussion

In this case, Petitioner claims he does not owe the debt, and more specifically claims that the “Court order[ed] possession of property to [his] ex-wife.” *Hearing Request*, Attachment.

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

31 C.F.R. § 285.11(8)(ii) states:

If the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

Petitioner submits, as support, a copy of a Decree of Dissolution (“Decree”) issued on February 24, 2010, by Hendricks Superior Court No. 4 for Hendricks County in Indiana. *Hearing Request*, Ex. 1 at p. 1. The Decree states, “The Court awards possession of the marital residence to [Kimberly D. Trent] . . . [Kimberly D. Trent] shall be responsible for all monthly expenses associated therewith including mortgage, U.S. Department of Housing debt” *Hearing Request*, Ex. 1 at p. 3. The Secretary contends, on the other hand, that “Petitioner’s reliance upon the terms of a divorce decree that purports to release Petitioner from any obligation to repay the subject debt is not a defense to this action.” *Sec’y. Stat.*, ¶ 8.

While Petitioner claims that the terms of the Decree show that he was released and that his ex-spouse is the responsible party for the subject debt, this Court has consistently maintained that co-signers of a loan are jointly and severally liable to the obligation. Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). “A creditor may sue the parties to such obligation separately or together” and thus, in this case, “the Secretary may proceed against any co-signer for the full amount of the debt” because each co-signer is jointly and severally liable. *Id.* See also Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004).

The Secretary’s right to collect the subject debt emanates from the terms of the Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). Pursuant to the Note, Petitioner is jointly and severally liable because “[e]ach person who signs this Contract agrees to pay this Contract according to its terms.” *Sec’y. Stat.*, Ex. 1, Note, at p. 3. The Note also states that Indiana law governs the transaction. The Indiana Supreme Court has held that divorce courts are “without authority to relieve one spouse from the liability of a mortgage on marital real estate when the mortgagee is not a party and does not consent to being divested of its interest.” Ellis v. Ellis, 730 N.E.2d 201, 204 (Ind. Ct. App. 2000) (citing Shula v. Shula, 132 N.E.2d 612 (1956)). Even according to Indiana law, Petitioner has yet to be released from his legal obligation to pay the subject debt.

At the time the Decree was issued in this case, HUD was the holder of the Note. *Sec’y. Stat.*, Ex. 3, Assignment of Note, dated August 17, 2009; Decree, at p. 4. In order for the Decree to affect Petitioner’s responsibility for the subject debt, the proceeding should have included HUD as a party. It is evident from the Decree that the only parties involved in that proceeding were Petitioner and his former spouse. Therefore, the terms of the Decree have no bearing on the collection of the debt that is the subject of this proceeding. The Decree only pertains to the obligations that exists between Petitioner and Kimberly D. Trent, and not the obligation of

Petitioner, as co-signer, to HUD, the holder of the Note. Accordingly, based on the terms of the Note, the Court finds that Petitioner remains legally obligated to pay the subject debt.

As a recourse, Petitioner may seek to enforce, in the state or local court, the divorce decree that was granted against his ex-spouse so that Petitioner may recover from his ex-spouse monies he paid to HUD in satisfaction of this legal obligation. See Michael York, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3.

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 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge