

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

In the Matter of:

Percy Cates, III,

Petitioner.

HUDOHA 14-VH-0048-AG-019
Claim No. 721001506OA

October 30, 2014

DECISION AND ORDER

On January 1, 2014, Percy Cates, III ("Petitioner") filed a hearing request concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("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 United States Government.

Applicable Law

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. 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 the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Thereafter, Petitioner 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). In addition, 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), on February 3, 2014, this Court stayed the issuance of a wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* ("Notice of Docketing")). On March 3, 2014, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file sufficient documentary evidence in support of his claim of financial hardship, or in response to the orders issued by this Court. This case is now ripe for review.

Background

On or about May 8, 2002, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$6,945.10. The Note secured a subordinate mortgage held by the Secretary. The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. *Sec'y, Stat* ¶ 6; *Sautter Decl.*, ¶ 5. As a result, Petitioner remains in default on the Note and is indebted to the Secretary in the following amounts:

- (a) \$6,739.67 as the unpaid principal balance as of February 7, 2014;
- (b) \$1,751.88 as the unpaid interest on the principal balance at 4% per annum through February 7, 2014;
- (c) \$373.09 as the unpaid penalties and administrative cost as of February 7, 2014; and
- (d) interest on said principal balance from February 8, 2014 at 4% per annum until paid.

(*Id.*)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent"), dated July 30, 2013 was sent to Petitioner. *Id.* at ¶ 6. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement. *Id.* at ¶ 7. Petitioner did not enter into a written repayment agreement or pay the debt in full in response to the Notice. *Id.* at ¶ 7.

Consequently, on September 4, 2013, the U.S. Department of the Treasury ("Treasury") issued a Wage Garnishment Order to Petitioner's employer. *Id.* at ¶ 8. Based on the issuance of the Wage Garnishment Order, HUD has received 9 payments totaling \$1,536.08. These payments have been credited to Petitioner's account, and are reflected in the outstanding balance shown above. *Id.* at ¶ 10.

HUD attempted to obtain a copy of Petitioner's most recent pay stub. However, to date, Petitioner has not provided a copy of her pay statement to HUD. *Sec'y Stat.*, ¶ 15; *Sautter Decl.*, ¶ 11. Since current garnishment amounts vary, the Secretary's proposed repayment schedule is 15% of Petitioner's monthly disposable pay. *Sec'y Stat.*, ¶ 15.

Discussion

Petitioner does not dispute the existence or enforceability of the debt. (*Petitioner's Hearing Request* ("Hearing Request")). Rather, Petitioner claims that he never received notice of the garnishment because it was not sent to the correct address. (*Id.*) Pursuant to 31 C.F.R. § 285.11(e), the agency must provide, at least 30 days before the initiation of garnishment proceedings, written notice to the debtor's last known address informing the debtor of: (i) the nature and amount of the debt; (ii) the intention of the agency to initiate proceedings to collect

the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and (iii) an explanation of the debtor's rights...and the time frame within which the debtor may exercise his or her rights. Moreover, unless otherwise notified by Petitioner of a change of address or a different address, reliance upon Petitioner's last known address of official records is appropriate for the Secretary to prove that Petitioner was given sufficient notice of garnishment as required by 31 C.F.R. § 285.11. Diane Sweet, HUDOA No. 10-H-NY-AWG54 (August 25, 2010).

The Secretary claims, on the other hand, that the Notice was mailed to Petitioner's last known address of record with HUD on July 30, 2013. *Sec'y. Stat.*, ¶ 11, Ex. 2, *Sautter Decl.*, Ex. A, Notice of Intent. The Secretary further explains that:

On or about November 14, 2013, Petitioner contacted the FOC by telephone and informed the Secretary that his address was 8 Sunset Road, Merrillville, IN 46410. At the time, Petitioner stated that he had not received a copy of the July 30, 2013 Notice from HUD because it was sent to the wrong address. Subsequent to that telephone conversation, the Secretary mailed a copy of the Notice to the Sunset Road address on November 15, 2013.

Secretary's Statement of Clarification, dated October 24, 2014.

In the instant case, the Secretary has proven that appropriate steps were taken, in accordance with the standard procedure in Petitioner's Social Search Report, to ensure that the Notice of Intent was issued to Petitioner's last known address. It is the obligation of Petitioner to notify of any change of address so that the party can be served with notices and pleadings or to make other appropriate arrangements for expeditious receipt of mail. Appeal of UPCAR Contractors, Inc., 83-1 BCA P16459 (April 21, 1982). Failure to do so is at the risk of the party failing to make such arrangements. *Id.* There is no indication from the record that Petitioner notified HUD of his new address before the July 30, 2013 Notice was first issued. Accordingly, the Court finds that the Secretary properly notified Petitioner of the impending garnishment and as a result Petitioner remains legally obligated.

Second, Petitioner further claims in his *Hearing Request* that the garnishment creates extreme financial hardship for him. In response, the Secretary contends that Petitioner's claim is wholly unsupported, and that Petitioner has not provided this Court with any documentary evidence of financial hardship, as required by 31 C.F.R. § 285.11(f)(8)(ii) and 31 C.F.R. § 285.11(k)(3). *Sec'y. Stat.*, ¶ 12.

Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. Raymond Kovalski, HUDBCA No. 87-1681-G18 (Dec. 8, 1986) But, in order to show financial hardship, Petitioner must submit documentary evidence in support of his hardship claim. Petitioner has failed to introduce any documentary evidence, despite being ordered by the Court to comply on three occasions. *See Notice of Docketing*, dated February 3, 2014; *Order for Documentary Evidence*, dated March 20, 2014; and *Order to Show Cause*, dated April 23, 2014. This 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 unenforceable." Troy Williams,

HUDOA No. 09-M-CH-AWG52 (June 23, 2009). Therefore, the Court finds Petitioner's claim fails for lack of proof.

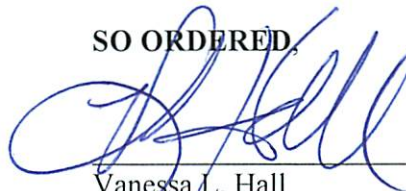
Petitioner finally states in his *Hearing Request* that he needs the "garnishment to be reduced to a \$100 monthly payment." While Petitioner may wish to negotiate repayment terms with the HUD, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Michael DeMarco, Director, HUD Financial Operations. His telephone number is 1-800-669-5152 extension 2859. A review of Petitioner's financial status may be conducted if Petitioner submits to that HUD office a Title I Financial Statement (HUD Form 56142).

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**.

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 pay. It is

SO ORDERED,



Vanessa L. Hall
Administrative Judge