

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

In the Matter of:

**Ronald I. Brill,**

Petitioner.

14-VH-0134-AG-052

2012132172A

April 10, 2015

**DECISION AND ORDER**

On August 25, 2014, Ronald I. Brill (“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” or “Government”). 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 August 25, 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 August 28, 2014, the Secretary filed his *Statement* along with documentation in support of his position. Despite Petitioner’s failure to comply with two previous Orders, Petitioner subsequently was granted an extension of time until December 3, 2014 to file documentary evidence, and thereafter on December 4, 2014 was issued an *Order to Show Cause*. To date, Petitioner has failed to comply with any of the Orders issued by the Court. This case is now ripe for review.

### Background

On June 24, 2009, Petitioner executed and delivered to the Secretary a Note to Domestic Bank in the amount of \$25,000.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. *Secretary's Statement* ("Sec'y. Stat.") ¶ 2, filed August 28, 2014; Ex. A, Note.

Petitioner failed to make payments on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54, on September 26, 2011, Admirals Bank f/k/a Domestic Bank assigned the Note to the United States of America. The Secretary is the holder of the Note on behalf of the United States. *Sec'y Stat.*, ¶ 3; Ex. C, *Declaration of Kathleen M. Porter* ("Porter Decl.")<sup>1</sup>, ¶ 3.

Accordingly, the Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. As a result, Petitioner remains in default on the Note. Petitioner is unjustly indebted to the Secretary in the following amounts:

- (a) \$ 19,173.02 as the unpaid principal balance as of August 28, 2014;
- (b) \$ 14.84 as the unpaid interest on the principal balance at 1% per annum through August 28, 2014; and,
- (c) Interest on said principal balance from August 29, 2014 at 1% per annum until paid.

*Sec'y Stat.*, ¶ 4; *Porter Decl.*, ¶ 4.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated July 28, 2014, was sent to Petitioner. *Sec'y Stat.*, ¶ 5; Ex. C, *Porter Decl.*, ¶ 5. In the Notice, Petitioner was afforded the opportunity to enter into a written repayment agreement under the terms acceptable to HUD. *Sec'y Stat.*, Ex. C, *Porter Decl.*, ¶ 6. Petitioner did not enter into a repayment agreement or pay the debt in full based on the July 28, 2014 Notice. *Sec'y Stat.*, ¶ 6.

An attempt was made to obtain Petitioner's current pay stub on August 27, 2014, and as of August 28, 2014, Petitioner has not provided HUD with his current pay stub. *Sec'y Stat.*, Ex. C, *Porter Decl.*, ¶ 7. The Secretary's proposed repayment schedule is \$530.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay. *Sec'y Stat.*, ¶ 9; Ex. C, *Porter Decl.*, ¶ 7.

### Discussion

In this case, Petitioner does not dispute the existence or amount of the subject debt, but instead he claims that the proposed garnishment amount would create a financial hardship, and

---

<sup>1</sup> Kathleen Porter is the Acting Director of the Asset Recovery Division in HUD's Financial Operations Center.

also claims that his wages should not be garnished because his wife's wages have already been garnished for the same debt. *Petitioner's Hearing Request* ("Hearing Request"), filed August 25, 2014, Attached Letter ("Treasury Letter"), dated August 12, 2014. Petitioner states that he contacted the Debt Management Services of the U.S. Department of the Treasury and stated, "I am respectfully requesting that you reconsider this proposed additional action. Please understand that we would be placed in a severe financial hardship if my wages were also to be garnished." *Id.* There is no record that Petitioner introduced evidence in support of his position.

The Court has consistently maintained that financial adversity alone 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, financial hardship may be raised as a valid claim if it is supported by sufficient documentation. Petitioner submitted an unsigned and unverified letter with his *Hearing Request*, but it is unclear whether Petitioner ever intended for that unsigned letter to be considered as evidence in support of his claim. Had that been the intent of Petitioner, the letter still would not have been considered by the Court as credible evidence because it lacked proper authentication. Petitioner cannot expect the Court to examine the validity of his claim, without evidence to prove that his claim is credible enough to warrant consideration. Here, Petitioner's claim of financial hardship is merely an allegation in the absence of such evidence.

In a case involving a claim of financial hardship, Petitioner "must submit 'particularized evidence,' including proofs of payment, showing that [s]he will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation." Ray J. Jones, HUDAJF 84-1-OA at 2 (March 27, 1985). Petitioner was repeatedly ordered by the Court to submit the necessary documentation to prove his hardship. Yet it is clear from the record that Petitioner repeatedly failed to comply with the Court's Orders, and thus has failed to meet his burden of proof. *See Notice of Docketing; Order for Documentary Evidence*, dated October 15, 2014; *Ruling and Order Granting Petitioner's Extension of Time*, dated November 13, 2014; and *Order to Show Cause*, dated December 4, 2014). This Court has consistently maintained that "[a]ssertions 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) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, the Court must find that Petitioner's financial hardship claim fails for lack of proof.

Next, Petitioner claims that his wages should not be garnished because his wife's wages were already garnished for the same debt. Again referencing the Treasury Letter, Petitioner states:

Two years ago, in 2012, my wife entered into a wage garnishment regarding this debt, (FedDebt Case Identification Number 2012132172B) and since then, she has been having withdrawn amounts of \$500.00 or more from her monthly income, of which your office has a record....At the time her garnishment was effected, my wife was informed by a manager at your office that only one (1) garnishment action would be taken against the same household. This manager informed her that my wages would not be garnished as well, to avoid additional hardship already put on our family.

The original (monthly) payments being made to the bank for this debt were approximately \$259.00, and the current garnishment is double that amount.

The above-referenced notice letter represents a second garnishment intent, which appears to be different than that which was originally agreed to by your office in 2012.

While the Treasury Letter is neither directed to HUD nor relevant to the enforceability of the subject debt, as co-signer of the Note herein, the result is still the same for Petitioner. The Secretary's right to collect the subject debt emanates from the terms of the Note. See Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). Co-signers of a loan are jointly and severally liable to the contractual obligation, and as a result, "a creditor may sue the parties to such obligation separately or together." Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). Consequently, "[t]he Secretary may proceed against any co-signer for the full amount of the debt" because each co-signer is jointly and severally liable for the obligation. Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). The contractual obligation in this case is apparent in the terms of the Note signed by Petitioner:

*If more than one person signs this Note, each of us is fully and personally obligated to pay the full amount owed and to keep all of the promises made in this Note, i.e. we are jointly and severally liable under this Note. ...The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. (emphasis added) Sec'y. Stat., Ex. A, ¶ 9.*

For Petitioner not to be held liable for the subject debt, he must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or, (2) evidence of valid or valuable consideration paid to HUD to release him from his legal obligation. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518-H51 (January 27, 1988); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986). In this case, Petitioner has failed to produce any evidence of a written release from his legal obligation to pay the subject debt or evidence of valuable consideration paid to HUD in satisfaction of the debt that would thus render the subject debt unenforceable. Therefore, the Court finds that in the absence of such evidence, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

The Secretary now seeks authorization of a proposed repayment schedule of \$530.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay. See 31 C.F.R. § 900-904. In addition to the Note, the Secretary introduced into evidence a sworn declaration from the Acting Director of HUD's Asset Recovery Division in which the Acting Director provided proof that the subject debt was legally enforceable against Petitioner. *Sec'y. Stat., Ex.*

C, *Porter Declaration*. The Court finds that the Secretary has successfully established that the subject debt is legally enforceable against Petitioner in the amount claimed by the Secretary.

As a final point, Rule 26.4(c) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing *including a determination against a noncomplying party.* (emphasis added)

On December 4, 2014, the Court issued the last of four Orders to Petitioner, an *Order to Show Cause*. Petitioner was informed:

**Failure to comply with this Order shall result in sanctions being imposed by the Court pursuant to 24 C.F.R. § 26.4 (c), including judgment being entered on behalf of the opposing party, or a decision based on the documents in the record of this proceeding.** (emphasis in original)

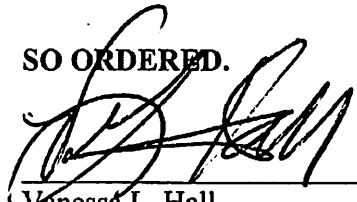
Because Petitioner has failed to comply with any of the Orders issued by the Court, I find that Petitioner's non-compliance also provides a basis for rendering a decision against Petitioner pursuant to Rule 26.4(c) of Title 24 of the Code of Federal Regulations.

### **ORDER**

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**. Therefore, 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 15% of Petitioner's disposable pay.

**SO ORDERED.**

  
\_\_\_\_\_  
Vanessa L. Hall  
Administrative Judge

---

**Review of determination by hearing officers.** A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.