

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

In the Matter of:

Bryce A. Bervig

Petitioner.

HUDOHA 15-VH-0048-AG-015

Claim No. 78-076487-1

August 5, 2016

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* ("Hearing Request") filed by Petitioner, Bryce A. Bervig, on March 10, 2015 concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary").

Pursuant to 31 C.F.R. § 285.11(f)(4), on March 11, 2015, the 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") at 2. On April 2, 2015, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to comply with the Orders issued by this Court to produce sufficient documentary evidence in support of his claim that the debt at issue does not exist. This case is now ripe for review.

JURISDICTION

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.

BACKGROUND

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, as a result of a defaulted loan that was insured against non-payment by the 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 allegedly owed to the United States government.

On or about December 14, 2009, Petitioner entered and delivered a Note, Disclosure and Security Agreement ("*Note*") in favor of San Luis Valley Federal Bank, in the amount of \$24,114.53. *Sec'y. Stat. ¶ 2; Ex. 1, Note*. The *Note* was insured against nonpayment by the

Secretary. *Sec'y. Stat.* ¶ 3; *Ex. B Declaration of Brian Dillon*¹, (“*Dillon Decl.*”) ¶ 3. Petitioner then failed to make payments on the *Note* as agreed, and the *Note* was assigned to HUD. *Sec'y. Stat.* ¶ 4; *Dillon Decl.* ¶ 3. Attempts to collect the debt from Petitioner have been unfruitful. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$22,513.33 as the unpaid principle balance as of February 28, 2015;
- b) \$545.80 as the unpaid interest on the principal balance at 1% per annum through February 28, 2015;
- c) \$1,414.38 as unpaid penalties and administrative costs through February 28, 2015; and
- d) interest on said principal balance from March 1, 2015 at 1% per annum until paid.

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

Pursuant to 31 C.F.R. §285.11 (e), on January 29, 2015 a Notice of intent to Initiate Administrative Wage Garnishment Proceedings (“*Notice*”) was sent to Petitioner. *Sec'y. Stat.*, ¶ 7; *Dillon Decl.*, ¶ 5. In accordance with 31 C.F.R. 285.11 (e) (2) (ii), Petitioner was afforded an opportunity to enter into a written repayment agreement. *Sec'y. Stat.* ¶ 8; *Dillon Decl.* ¶ 6. Petitioner did not enter into a repayment agreement or pay the debt in full in response to the *Notice*. *Id.*

Petitioner provided HUD with a bi-weekly pay statement for the term ending January 31, 2015. *Sec'y. Stat.* ¶ 10; *Dillon Decl.* ¶ 7. After deductions, Petitioner’s disposable income was calculated to be \$2,902.67. The Secretary therefore proposes a bi-weekly garnishment of \$435.40 from Petitioner’s paycheck, in conformity with the amounts recommended by the Federal Claims Collection Standards, or 15% of Petitioner’s disposable pay. *Sec'y. Stat.* ¶ 10,11; *Dillon Decl.* ¶ 7.

Discussion

Petitioner disputes, in his *Hearing Request*, the amount of the debt as claimed by the Secretary. *Hearing Request* at 1. However, there is no record of Petitioner filing any documentary evidence in support of his position.

The Secretary claims, on the other hand, that Petitioner’s debt is past due and legally enforceable and, as a result, seeks the Court’s authorization of his proposed repayment schedule for Petitioner. In support of his position, the Secretary produced a copy of the *Note* signed by Petitioner, along with a copy of a sworn declaration from the Acting Director of HUD’s Asset Recovery Division in which the Director substantiates the debt amount owed by Petitioner. *See Sec'y. Stat.*, Ex. A, *Note*; Ex. B *Dillion Declaration*. It is evident that Petitioner agreed to the obligations as set forth in the *Note*, which of course includes Petitioner’s agreement to pay \$25,000 at a 7.625% rate. *Note*, ¶ 1 (“*Promissory Note*”).

Petitioner was ordered by the Court on three occasions to file documentary evidence in support of his position, but he failed to comply with any of the Court’s Orders. *See Notice of*

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

Docketing dated March 11, 2015; and *Orders* dated April 3, 2015 and April 27, 2015. 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 and 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)). Because Petitioner has failed to produce any evidence that would otherwise convince the Court that the amount of the debt is erroneous, the Court finds that the evidence in the record shows that the Secretary has successfully met his burden of proof. Therefore, the Court further finds Petitioner’s claim fails for lack of proof, and as a result Petitioner remains contractually obligated to pay the alleged debt in the amount so 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).

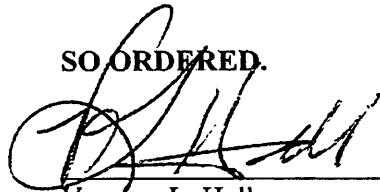
Accordingly, the Court finds that, pursuant to Rule 26.4(c), Petitioner’s non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision in favor of the Secretary.

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 monthly disposable income.

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.