
In the Matter of: :
Frank C. Collins, : HUDBCA No. 03-A-CH-AWG31
Petitioner :
:

Frank Collins
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Jasper, TX 75951

Pro se

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For the Secretary

DECISION AND ORDER ON
ADMINISTRATIVE WAGE GARNISHMENT

Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). This alleged debt resulted from a defaulted loan, which was insured against non-payment by the Secretary of HUD. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes Federal agencies to utilize administrative wage garnishment as a remedy for the collection of debts owed to the United States Government.

The administrative judges of this Board have been designated to determine whether this debt is past-due and enforceable against Petitioner, and, if so, whether the Secretary may collect the alleged debt by administrative wage garnishment. 24 C.F.R. § 17.170(b). This hearing was conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. 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). Petitioner thereafter must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, Petitioner may present evidence that the terms of the

repayment schedule are unlawful, would cause a financial hardship to the Petitioner, or that collection of the debt may not be pursued due to operation of law, 31 C.F.R. § 285.11 (f)(8)(ii). Pursuant to 31 C.F.R. § 285.11 (f)(10)(i), issuance of a wage withholding order was stayed until the issuance of this written decision.

SUMMARY OF FACTS AND DISCUSSION

On July 1, 1994, Petitioner executed and delivered to Statewide Mortgage an installment note in the amount of \$22,485.00 for a home improvement loan that was insured against non payment by the Secretary pursuant to the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement, hereinafter "Secy. Stat.," Exh. A). Thereafter, Statewide Mortgage assigned the note to Norwest Bank of Texas.(Secy. Stat., unmarked exhibit). Petitioner failed to make payments as agreed to on the note. (Secy. Stat., para. 3). Subsequently, Norwest Bank of Texas assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54. Id. The Secretary is the holder of the note on behalf of the United States. Id. Petitioner is indebted to the Secretary in the following amounts: \$19,544.58 as the unpaid principal balance as of August 30, 2003; \$4,318.87 as the unpaid interest on the principal balance at 5% per annum through August 30, 2003; and interest on said principal balance from August 31, 2003, at 5% per annum until paid. (Secy. Stat., Exh. B, Declaration of Lester West, hereinafter "West Decl.").

The Secretary has filed a Statement with documentary evidence in support of his position that the Petitioner is indebted to the Department in a specific amount. Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner disputes the terms of the proposed repayment schedule and asserts that administrative wage garnishment would cause adverse financial hardship.

Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship to the Petitioner. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner states that his "financial situation makes it hard for [him] to meet [the terms of the repayment schedule.]" (Supplement to the Secretary's Statement, hereinafter, "Supp. Secy. Stat.," unmarked exh., Hearing Request Form dated August 26, 2003). As evidence that the administrative wage garnishment would cause financial hardship Petitioner states that he has "three children to support and [lives] paycheck to paycheck." (Petitioner's letter received September 30, 2003). Petitioner also submitted various documents as evidence that the terms of the repayment schedule would cause financial hardship including: a utility, gas, cable, and telephone bill; a life and car insurance bill; a lease and car payment agreement; and three pay stubs.

(Petitioner's letter received September 30, 2003, unmarked exhs.). Upon due consideration, this Board finds that the Petitioner has submitted sufficient documentary evidence which substantiates his claim that the administrative wage garnishment of his disposable pay, in the amount sought by the Secretary, would cause financial hardship.

Petitioner claims that "the wage garnishment [has] already started and [the amount was] figured out by [my employers'] payroll department." (Petitioner's letter received September 30, 2003). The United States Department of the Treasury ("Treasury") sent Petitioner a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, ("NOI") dated June 20, 2003. (West. Decl., para. 8). The NOI stated that if Treasury received Petitioner's "written request for a hearing on or before 07-16-03, Treasury [would] not [issue] a wage garnishment order. . .until [his] hearing [was] held and a decision [was] reached." (Supp. Secy. Stat., Exh. A, Supplemental Declaration of Lester J. West, hereinafter "Supp. West. Decl.," para. 3). Petitioner's hearing request form is dated August 26, 2003. (Supp. Secy. Stat., unmarked exh., Hearing Request Form dated August 26, 2003). In the absence of a timely request for a hearing, Treasury properly issued an administrative wage garnishment order on July 23, 2003. (Supp. Secy. Stat., Exh. B, United States Government Wage Garnishment Order (SF-329B)).

It is well-established that a garnishment under this program may be up to an amount not to exceed fifteen (15) percent of the debtor's disposable pay. Petitioner alleges that his employer's payroll department did not know "how to calculate the amount" to be garnished from his net disposable pay. (Petitioner's undated letter received Dec. 1, 2003). As evidence of how Petitioner's employer's payroll department calculated the amount withheld from Petitioner's bi-weekly pay check, Petitioner submitted a document entitled "Answers of Garnishee" signed by Diana McChristian, Payroll Manager of Wal-Mart Stores, Inc. (Petitioner's undated letter received September 30, 2003, Exh. B). The Answers of Garnishee show that fifteen (15) percent, or \$95.85, was withheld from Petitioner's disposable pay of \$638.98 as directed by the Treasury on July 23, 2003. (Id.; Supp. Secy. Stat., Exh. B, United States Government Wage Garnishment Order (SF-329B), Section 2(b)(1)). Petitioner has not provided the Board with an explanation as to why he believes that the amount withheld from his paycheck, for the bi-weekly period from August 23, 2003 to September 5, 2003, was incorrect.

However, the Board finds that the amount withheld from Petitioner's disposable pay for this bi-weekly pay period was calculated improperly. To properly calculate the amount to be withheld, the employer should have utilized the amount

of Petitioner's bi-weekly earnings less the amount withheld for taxes. In this specific pay period, Petitioner's "Regular Earning [sic]" were \$615.48; "Social Security" taxes were \$44.98. After subtracting these taxes from regular earnings, Petitioner's disposable income for this bi-weekly period should have been \$570.50. Fifteen (15) percent of \$570.50 is \$85.50. Therefore \$85.50 should have been garnished from Petitioner's pay, rather than \$95.85. However, the Board finds this instance of improper calculation by Petitioner's employer of the amount to be withheld from Petitioner's disposable pay is inconsequential and that Petitioner is not entitled to any reimbursement for the nominal amount overwithheld.

As for Petitioner's interest in negotiating a payment amount acceptable to Petitioner, Petitioner is advised that this Board is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may wish to discuss this matter with Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206. Petitioner may also request a review of his financial status by submitting to that HUD Office a Title I Financial Statement (HUD Form 56142).

In any event, I find that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, but that an amount equal to fifteen (15) percent of Petitioner's disposable income would constitute a financial hardship.

ORDER

It is my determination that the amount to be garnished bi-weekly in satisfaction of this debt -shall not exceed the sum of 10% of Petitioner's disposable income.

The Order imposing the stay of referral of this matter to the U.S. Department of 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.

The Secretary shall not be prejudiced from seeking an increase in the amount to be recovered by administrative wage garnishment if, in the future, Petitioner's income increases or his bi-weekly expenses for necessities are reduced.

David T. Anderson
Administrative Judge

January 12, 2004