

In the Matter of:

DARRELL VAN KIRK,

Petitioner

HUDBCA No. 03-A-CH-AWG03

FHA No. 7-80225568

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For the Secretary

DECISION ON ADMINISTRATIVE WAGE GARNISHMENT

Background

Petitioner has 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 has resulted from a defaulted loan which was insured against non-payment by the Secretary of HUD. This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations. 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). 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.

The hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170, and is limited to a review of the written record, unless otherwise ordered. 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 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).

Summary of Facts and Discussion

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 review of the record of this proceeding is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170.

On October 31, 1997, Petitioner executed and delivered to Security First Funding Corporation an installment note in the amount of \$25,000.00 for a home improvement loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement, hereinafter "Secy. Stat.", Exh. A). Thereafter, Security First Funding Corporation assigned the note to PSB Lending Corp. Petitioner subsequently defaulted on the note. Consequently, PSB Lending Corp. assigned the note to the United States of America pursuant to 24 C.F.R. § 201.54. (Secy. Stat., at 3).

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in a specific amount. Petitioner claims only that he "do[es] not know if [he] owes [this] debt." (DCS Hearing Request Form dated October 17, 2002). Petitioner, however, has presented no evidence to prove that he did not execute the loan documents attached to the Secretary's Statement.

Petitioner has submitted an undated letter which was received by the Board by telecopier on November 18, 2002 in which he appears to claim that Ruben Sanchez dba Regency One Properties "fraudulently acquired" the proceeds from the HUD-insured home improvement loan in collusion with the lender, acted improperly by mismanaging certain properties owned by Petitioner, and "embezzled" money from Petitioner. However, Petitioner's recourse would, under such circumstances, be to report this alleged criminal conduct to law enforcement authorities. Any criminal investigation and possible prosecution of Sanchez or Security First Funding is not within

the jurisdiction of the Board. This Board only has the authority to determine whether the debt that the Secretary seeks to collect is enforceable against Petitioner. Petitioner, notwithstanding his allegations against Sanchez, has submitted no documentary evidence which would prove that this debt is not enforceable against him. Assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable. Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996).

Petitioner states that he is willing to resolve this matter without the necessity of wage garnishment, and seeks an arrangement with the Department to repay this debt. (Petitioner's undated letter received November 18, 2002). However, this Board is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Consequently, Petitioner may wish to convey his offer to settle this matter to counsel for the Secretary in this proceeding or to Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. West's 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, Petitioner has provided no legal or credible factual basis on which this Board can find that he is not liable for repayment of the outstanding balance due on this loan.

ORDER

In the absence of any evidence submitted by Petitioner to disprove the documentary evidence submitted by the Secretary, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. 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 to the extent authorized by law.

David T. Anderson
Administrative Judge

Date: January 27, 2003