
In the Matter of:

DANNY J. HUCKEBA and RONDA K. HUCKEBA,
Petitioners

HUDBCA No. 03-C-CH-AWG02
Claim No. 7-70237284-0

Danny J. Huckleba and
Ronda K. Huckleba
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Mesquite, TX 75149

Petitioners
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For the Secretary

DECISION ON ADMINISTRATIVE WAGE GARNISHMENT

Background

Petitioners have requested a hearing concerning the proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). The request for a hearing was received by the HUD Board of Contract Appeals on October 16, 2002. This alleged debt 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 Petitioners 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 the written decision.

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. § 17.170, and is limited to a review of the written record. The Secretary has the burden of proof of the existence or amount of

the debt. 31 C.F.R. § 285.11 (f)(8)(i). Petitioners have the burden of proving by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, Petitioners may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to Petitioners, or that collection of the debt may not be pursued due to operation of law. 31 C.F.R. § 285.11(f)(8)(ii).

Petitioners contend that the amount of the debt is incorrect, and that administrative wage garnishment would cause financial hardship.

Summary of Facts and Discussion

On May 16, 1980, Petitioners Danny J. and Ronda K. Huckeba executed and delivered to Metroplex Homes, Inc. an installment note for a mobile home loan that was insured against non-payment by the Secretary of HUD pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. Metroplex Homes, Inc. thereafter assigned the note to Green Tree Acceptance, Inc. (Secretary's Exhibit A.) On March 3, 1988, Petitioners defaulted on the note. (Letter dated August 8, 1989 from John Pitman, Title I Representative, to Petitioners.) The note was thereafter assigned to HUD by Green Tree Acceptance, Inc. (Declaration of Lester J. West, October 25, 2002.)

The mobile home was inspected on April 8, 1988. Poor conditions were noted on doors, carpeting, walls, the kitchen ceiling and floor, and appliances. (Exhibit A to Declaration of Lester J. West, October 25, 2002.) The mobile home was appraised on June 13, 1988. The appraised value for the mobile home "As Is" was \$4,200, and the appraised value "As Repaired" was \$5,700. (Exhibit B to Declaration of Lester J. West, October 25, 2002.) Petitioners contend that the appraisal form dated June 13, 1988 was "altered," and that \$5,700 was originally written in the "As Is" block for the appraised value. Petitioners claim that this figure was erased, and that \$4,200 was written in the "As Is" block. (Petitioners' Unmarked Exhibit-Appraisal dated June 13, 1988.)

The mobile home was sold for \$4,200, "As Is, Where Is" on October 7, 1988. (Exhibit C to Declaration of Lester J. West, October 25, 2002.) The amount of the debt still owed by Petitioners following resale of the mobile home was \$9,433.54. Petitioners made no payments on the debt until 1995, and interest continued to accrue. (Exhibit D to Declaration of Lester J. West, October 25, 2002.)

Between May 12, 1995 and July 6, 1998, Petitioners voluntarily made 40 payments of \$100 each, which were posted to their account, although the payments were listed in the name of Danny Huckeba only. In addition, \$558 was credited to Petitioners' account to reflect a Federal income tax refund offset on May 12, 2000; \$600 was credited to Petitioners' account to reflect a Federal income tax refund offset on July 27, 2001. (Declaration of Lester J. West, October 25, 2002, and Exhibit D to that Declaration.)

As of September 30, 2002, the unpaid principal balance on the note was \$9,509.34 and the unpaid interest balance was \$3,031.10. (Exhibit D to Declaration of Lester J. West, October 25, 2002.) Petitioners' account was referred by HUD to the U.S. Department of Treasury for cross-servicing collection on April 22, 1998. The U.S. Department of Treasury added a Debt Management Service ("DMS") fee of \$376.21 and a private collection agency fee of \$3,135.11 to Petitioners' account. (Declaration of Lester J. West, October 25, 2002.)

By letter dated May 6, 2002, Danny Huckeba was notified by Pioneer Recovery, Inc. ("Pioneer") that the U.S. Department of Treasury had placed his account for the debt owed to HUD with Pioneer for collection. The amount claimed by Pioneer, \$18,005.30, included "accrued interest, penalty charges, fees, and expenses incurred by the Treasury Department in having a private agency collect this debt." (Letter dated May 6, 2002 to Danny Huckeba from Pioneer.)

By letter dated May 11, 1998, Danny Huckeba was notified in writing that his account had been taken over by the U.S. Department of Treasury Financial Management Service ("FMS") for collection. FMS demanded that Danny Huckeba pay \$13,559.65 within ten days of the date of the May 11, 1998 letter or "aggressive legal collection action will commence against you." FMS added approximately \$2128.91 in administrative fees to the amount past-due as of May, 1998. (Letter dated May 11, 1998 to Danny Huckeba from Charles A. Wilson, FMS.)

Danny Huckeba received a Repayment Notice dated May 26, 1998 from FMS, which stated "[t]his is a reminder that your payment of \$100 is due on 06/15/98 in accordance with our agreement reached on 05/18/98." Danny Huckeba received a letter from Cecelia Crandall, FMS, dated June 23, 1998, stating that he had reached an agreement on May 18, 1998, in which he agreed to pay his debt to HUD by making payments of \$100 a month to FMS. Petitioners deny that they reached such an agreement with FMS on

May 18, 1998, although they continued to make the monthly \$100 payments to the collection agency representing HUD.

By letter with attachments dated June 2, 1998 to Danny Huckeba from Charles A. Wilson (FMS), Danny Huckeba was sent an "Agreement to Pay" regarding his debt with HUD. The letter referenced a telephone conversation on May 18, 1998 between Danny Huckeba and Lisa Pickard of FMS. The letter stated that HUD is "willing to accept your proposed repayment terms as described in the enclosed Agreement to Pay." The Agreement to Pay prepared by FMS waived interest on the unpaid principal of \$9,509.34. It also waived an unpaid "administrative fee" and a "penalty", but it included the DMS fee of \$2,067.94. The total amount owed as set forth in the Agreement to pay was \$11,577.28, to be paid in \$100 monthly installments. (Letter dated June 2, 1998, from Charles A. Wilson to Danny Huckeba.) Petitioners contend that they did not sign the Agreement to Pay because it still included the DMS fee of \$2,067.94. Petitioners made one more payment to the collection agency during this period, not to FMS. After July 6, 1998, Petitioners made no further voluntary payments on the debt. (Exhibit D to Declaration of Lester J. West October 25, 2002.)

Danny Huckeba has requested this hearing on administrative wage garnishment on behalf of himself and Ronda Huckeba, who was not named as subject to administrative wage garnishment. Danny Huckeba claims that he does not owe the full amount of the debt because of "altered documents, inconsistent balances, high fees and interest, misleading collection practices, original debt 54% repaid." He also states that administrative wage garnishment would "send us into financial ruin," and attached detailed financial information about their income and expenses in support of their position, which was prepared by Petitioners, not a financial professional. Petitioners also filed a copy of the statement of earnings for Danny J. Huckeba for October, 2002.

There is no evidence in the record before me of a proposed repayment schedule in lieu of wage garnishment of up to 15% percent of disposable pay.

The evidence of financial hardship submitted by Petitioners is as follows:

Monthly Income for Danny Huckeba:	\$3,227.58
Deductions from monthly pay:	\$949.05
Net disposable pay:	\$2,278.53

(Statement of Earnings for Danny J. Huckeba for October, 2002.)

In the unsworn financial statement prepared by Petitioners, the following uncontested information was provided: two adult daughters and two minor grandchildren live with Petitioners, and contribute no income to the household. Petitioners provide room and board to all four dependents, furnish college tuition, books, supplies, transportation and daily expenses for one daughter, and furnish a car, but not car maintenance, to the other daughter. Ronda Huckeba is self-employed. Her income from September 5 to October 5, 2002 was \$1,582.00, but it fluctuates. After deducting expenses for a business lease, supplies, insurance, and taxes, Ronda Huckeba's disposable pay was \$631.94. Petitioners have high balances on their four credit cards, totaling \$18,849.43, and made minimal payments totaling \$716.61 on the four accounts during a one-month period.

Petitioners also have three loans outstanding. They owe Conseco Finance \$7,350, Bank of the West \$7,027.51, and Barbara Ostrem, who is Ronda Huckeba's mother, \$38,000 for helping to finance their house. They paid a total of \$711.36 on the three loans during a one-month period. In addition, Petitioners have utility bills that totaled \$366.45 during a one month period in September, 2002, medical expenses of \$70 during September, and dental expenses of \$75. Monthly house and car insurance cost Petitioners \$212.74 a month, which includes coverage for four vehicles. Gasoline for the cars costs Petitioners \$94.95 in September, 2002. Monthly vehicle maintenance is listed as costing \$125. Real estate taxes cost Petitioners \$101.84 per month. Petitioners also provide cell phones for their two daughters, at a cost of \$82.17 a month. Their grocery bills for a family of six cost approximately \$600 a month, and clothing costs average \$750 a month. Miscellaneous costs and gifts, including personal care products, house maintenance, charitable contributions, and travel, "all when funds allow," are listed as totaling \$150 a month. Danny Huckeba states that he maintains a monthly checking account balance of \$500 to \$800 above the minimum required by the bank. I find the financial information prepared by Petitioners to be generally credible, if somewhat overstated for estimated averages of monthly living expenses. The information about the loans and loan payments was specific, not estimated, as was the credit card information, insurance expenses, and utility bills. (Petitioners' submission attached to Request for Hearing.)

CONCLUSION

After a review of the record in this proceeding, I find that the total unpaid balance, including the DMS fee and the private collection agency fee, was \$16,051.76 as of September 30, 2002. I credit the evidence filed by HUD, rather than the various demands from FMS or Pioneer, which were unsubstantiated by a payment history report. The additional fees added by the U.S. Department of Treasury are high, but Petitioners have not produced evidence that they are not allowable.

While Petitioners question the validity of the "As Is" appraisal of the mobile home, they have failed to file credible documentary evidence to rebut the Secretary's evidence that the mobile home had an appraised "As Is" value of \$4,200 when it was sold in 1988. The alteration to the appraisal form reflects only that the appraised value of \$5,700 "As Repaired" was mistakenly written in the "As Is" box on the form, and was then corrected to reflect the "As Is" valuation, with the appraised amounts for "As Is" and "As Repaired" placed in the correct boxes on the appraisal form.

The Secretary seeks administrative wage garnishment from Danny Huckeba of up to 15% of his disposable monthly pay. This allowable 15% wage garnishment is authorized by 31 C.F.R. § 285.11(h)(2)(i)(A). Danny Huckeba's disposable monthly pay is \$2,278.53. A maximum 15% garnishment of \$2,278.53 is \$341.78 per month. The total of all monthly expenses claimed by Petitioners is \$3,298.95. They claim a combined disposable monthly pay of \$2,970.17. However, I find that some of their monthly expenses have been over-estimated by them. Danny Huckeba claims to keep a balance of \$500-800 over the minimum in his checking account, after all monthly expenses are paid, which would not be possible if he were paying the full amount of the monthly expenses listed by him.

Nevertheless, even if Petitioners have estimated some of their monthly expenses as higher than they actually are, I find that a 15% wage garnishment would constitute an undue financial hardship. I therefore find that an administrative wage garnishment of 10%, rather than 15%, should be the maximum amount sought.

ORDER

The debt claimed by the Secretary is past-due and enforceable against Petitioners in the amounts claimed by the

Secretary. The Secretary is authorized to pursue recovery of this debt by means of administrative wage garnishment in an amount no more than 10% of the disposable pay of Danny J. Huckeba.

Jean S. Cooper
Administrative Judge

December 13, 2002