
In the Matter of:

Barry Barbare,

Petitioner

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HUDBCA No. 03-A-NY-AWG36
Claim No. 780527807

Barry Barbare
311 Roscoe Dr.
Greer, SC 29651

Pro se

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For the Secretary

DECISION AND ORDER

Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing 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. § 3702D), authorized Federal agencies to utilize administrative wage garnishment as a remedy as 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 Petitioner, or that collection of the debt may not be pursued due to

operation 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 30, 1996, Petitioner executed and delivered to Vanderbilt Mortgage and Finance, Inc. (hereinafter "Vanderbilt") an installment note for \$40,132.60 to purchase a manufactured home 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). Petitioner then defaulted on the note, and Vanderbilt assigned the note to the United States of America pursuant to 24 C.F.R. § 201.54. (Secy. Stat., Exh. B). Petitioner is indebted to the United States in the following amounts: \$9,565.26 as the unpaid principal balance as of August 30, 2003; \$577.42 as the unpaid interest on the principal balance at 3% per annum through August 30, 2003; and interest on said principal balance from August 31, 2003 at 3% per annum until paid. The Secretary proposed garnishment at a rate of \$74.85 per week based upon 15% of Petitioner's weekly earnings of \$704.00 minus allowable deductions. (Secy. Stat., Exh. C, Declaration of Brian Dillon, ¶ 7).

Petitioner has not denied that the debt is past due and enforceable, but has only asserted an inability to pay. Petitioner has failed to file any evidence to prove that the Secretary's proposed repayment schedule is unlawful, would cause financial hardship, or that collection of the debt may not be pursued due to operation of law. 31 C.F.R. § 285.11(f)(8)(ii). Moreover, Petitioner has not responded to the Board's Notice of Docketing, Order, and Stay of Referral dated September 12, 2003 and its subsequent Order to Show Cause dated December 18, 2003.

ORDER

For the reasons set forth above, 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.

H. Chuck Kullberg
Administrative Judge

January 29, 2004