
In the Matter of:

Todd Hinesley,

Petitioner

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HUDBCA No. 03-A-NY-AWG27

Todd Hinesley
1707 Lovers Lane
Hopkinsville, KY 42240

Pro se

Nicole K. Chappell, Esq.
U.S. Department of Housing and
Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278-0068

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 November 4, 1994, Petitioner executed and delivered to Vanderbilt Mortgage and Finance, Inc. an installment contract in the amount of \$86,612.80 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). Petitioner failed to make payments as agreed to on the note. (Secy. Stat., para. 3). Thereafter, Vanderbilt Mortgage and Finance, Inc. 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. (Secy. Stat., Exh. B). Petitioner is indebted to the Secretary in the following amounts: \$6,343.82 as the unpaid principal balance as of July 30, 2003; \$26.40 as the unpaid interest on the principal balance at 5% per annum through July 30, 2003; \$191.10 as the U.S. Department of Treasury ("DMS") fee; \$1,592.56 as the private collection agency ("PCA") fee; and interest on said principal balance from August 1, 2003, at 5% per annum. (Secy. Stat., Exh. C, Declaration of Glen Goodman, para. 4).

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). The Supplemental Declaration of Brian Dillon sets forth in specific detail the Secretary's position that the legally permissible 15% of Petitioner's net disposable income is being sought by means of a wage withholding order. (Secy. Response to Order, Exh. B, para. 2-12). As evidence that the administrative wage garnishment would cause financial hardship the Petitioner filed a "Consumer Debtor Financial Statement," in which he and his spouse, Jennifer Hinesley, list various household expenses including: rent, gasoline, electricity, food, cable, medical expenses, clothing and trash. (Consumer Debtor Financial Statement dated July 21, 2003, unmarked exh.). On September 24, 2003, Petitioner was ordered to:

file with the Board documentary evidence which shows:

- 1) Petitioner's income by submitting a copy of a pay stub from the two most recent pay periods and a copy of his W-2 filed with the Internal Revenue Service which accompanied his 2002 Federal Income tax statement;
- 2) documented expenses for the most recent month for which a bill was received by Petitioner, including but not limited to, automobile payment and utility bills.
(Order dated September 24, 2003).

Petitioner neither complied with this Order nor submitted documentary evidence on which the Board could find that the repayment schedule proposed by the Secretary created a financial hardship. This Board finds that Petitioner has failed to substantiate his claim that an administrative wage garnishment, in the amount proposed by the Secretary, would cause a financial hardship to Petitioner.

Petitioner states that he is "asking if [HUD] can make the garnishment from [Petitioner's] check [sic] \$200.00 a month. (emphasis in original). . . .We can not make it on what [Treasury is] taking from my check right now." (Hearing Request Form dated July 21, 2003, unmarked exh.). 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).

On October 23, 2003, this Board ordered the Secretary to "file documentary evidence which shows why the PCA is entitled to the amount alleged in the Secretary's Statement, there being no documentary evidence of the sum actually collected by the PCA from Petitioner." (Order dated October 23, 2003). The Secretary has failed to respond to the Board's Order. Inasmuch as the Secretary has failed to provide documentary evidence to substantiate his position and has failed to comply with the Order of this Board to do so, the Secretary's claim for PCA fees in the amount alleged must fail for lack of proof.

ORDER

I find that the debt which is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary, excluding the PCA fee in the amount of \$1,592.56. 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

January 7, 2004