Office of Appeals
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0001

In the Matter of: **Karl A. Mason,** Petitioner	HUDOA No. 09-H-NY-AWG108 Claim No. 77-091027-0A

Karl A. Mason
P.O. Box 143
Dendron, VA 23839

Pro se

Sara Mooney, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

On May 28, 2009, 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"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States Government. The Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b).

The administrative judges of this Office have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. 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 show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. (Id.)

Pursuant to 31 C.F.R. § 285.11(f)(4), on June 11, 2009, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated June 11, 2009.)

Background

On August 16, 1995, Petitioner executed and delivered a Home Improvement Installation Contract ("Note") to Zintron in the amount of $13,200.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y Stat"), filed June 26, 2009, ¶ 2, Ex. A.) Subsequently, on August 25, 1995, the Note was assigned by Zintron to Empire Funding Corp. (Sec'y Stat., ¶ 3, Ex. A. at p. 2.)

Petitioner failed to make payments as agreed upon in the Note. (Sec'y Stat., ¶ 4.) Consequently, in accordance with 24 C.F.R. § 201.54, on June 3, 1996, Empire Funding Corp., servicing agent for 1st National Bank of Keystone assigned the Note to the United States of America. The Secretary is the holder of the Note on behalf of the United States of America. (Sec'y Stat., ¶ 4, Ex. A. at p. 2)

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. (Sec'y Stat., ¶ 5, Ex. B, Declaration of Brian Dillon, ("Dillon Decl."), Director, Asset Recovery Division, Financial Operations Center, HUD, ¶ 4.) As a result, Petitioner remains in default on the Note. Petitioner is indebted to the Secretary in the following amounts:

> (a) $13,184.33 as the unpaid principal balance as of May 31, 2009;
> (b) $8,221.04 as the unpaid interest on the principal balance at 5.0% per annum through May 31, 2009; and
> (c) interest on said principal balance from June 1, 2009, at 5.0% per annum until paid.

(Id.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner on or about March 4, 2009. (Sec'y Stat., ¶ 6, Ex. B, Dillon Decl., ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. (Sec'y Stat., ¶ 8, Ex. B, Dillon Decl., ¶ 5.) As of June 23, 2009, Petitioner had not entered into a written repayment agreement in response to the March 4, 2009 Notice. (Id.)

A Wage Garnishment Order dated February 19, 2009 was issued to Petitioner's employer. (Sec'y Stat., ¶ 9, Ex. B, Dillon Decl., ¶ 6.)

Based on the issuance of the Wage Garnishment Order, HUD received four garnishment payments of $147.31. These payments were credited towards Petitioner's debt, and are reflected in the outstanding balance now due. (Sec'y Stat., ¶ 10, Ex. B, Dillon Decl., ¶ 6.)

On October 31, 1995, Petitioner filed Chapter 13 Bankruptcy in Richmond, Virginia (Case # 95-34685). Petitioner included the debt which is the subject of this proceeding listing Empire Funding, TMI Finance Corp., PO Box 149-61, Newport News, VA 23602 as creditor. (Dillon Decl., ¶ 9.) The debt was to be paid outside of the plan, but the debt was not paid. Petitioner received a Bankruptcy Discharge on December 30, 2000. However, Petitioner's Chapter 13 Bankruptcy did not discharge the personal liability of Petitioner on subject debt. (Id.)

The Secretary's proposed payment schedule is 15% of Petitioner's disposable income, which is estimated to be $147.31 monthly. (Sec'y Stat., ¶ 11, Ex. B, Dillon Decl., ¶ 7.)

Discussion

Petitioner challenges the existence of the debt and states that he is not responsible for its payment. Petitioner asserts that: (1) "we were never approved for the loan;" (2) the loan documents and completion certifications were signed because he was "instructed to sign the completion forms," not because the work was completed; and, (3) "we were victims of a scam on poor and old people." (Petitioner's Hearing Request ("Pet'r Hearing Req."), filed June 8, 2009; Petitioner's July Letter ("Pet'r July Let."), dated July 10, 2009.) Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists.

First, Petitioner contends that "we were never approved for the loan" and as such, the debt that is claimed by the Secretary does not exist. (Pet'r Hearing Req.) Petitioner further contends "After months of waiting for the work to be done, we decided that we did not want the work done because it took so long to get the approval for the loan." (Pet'r July Let.) But, Petitioner failed to provide documentary evidence to prove that his loan was never approved. Even though Petitioner denied the existence of the loan he later acknowledged the existence of the loan by stating "I did not make payment on the loan because I did not request that Zintron move forward with the work." (Pet. July Ltr.) Thus, by Petitioner's own admission, a loan existed but Petitioner elected not to pay on the loan. The Secretary provided, however, a copy of the home improvement installment contract that set forth the terms of the loan that were agreed to and signed by Petitioner. (Sec'y Stat., Exhibit A.) Petitioner's allegation that the loan did not exist, without evidence to refute that presented by the Secretary, is insufficient to substantiate Petitioner's claim. This Office has consistently held that, "[a]ssertions 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); Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009). Accordingly, I find that Petitioner's claim that his loan was never approved fails for lack of proof.

Second, Petitioner alleges that the work listed on the Agreement dated May 9, 1995 "was never done by the contractor" and thus the loan documents and completion certifications of record were only signed by him because "we were instructed to sign the completion forms when they [lawyers and notaries] came. ("Pet'r July Let.") Petitioner also states that "I've never denied signing completion forms. As I stated before, there were several completion forms that were signed from May until August of 1995, but the dates were always added on later." (Id.)

Petitioner further explains that "When we would sign completion forms, there were always lawyers and notaries present, from Philadelphia and other places, to sign the forms then because they were unable to come back at a later date." (Id.) Petitioner's mere allegation, that he signed the completion forms only because he was "instructed to sign," not because the work was completed, is insufficient without supporting documentation. In this case in order for Petitioner to establish what is deemed to be a claim of duress or coercion, Petitioner must prove three elements: 1) that one side involuntarily accepted the terms of another, 2) that circumstances permitted no other alternative, and 3) that the circumstances were the result of coercive acts of the opposite party. American Capital Mortgage Co., HUDBCA No. 05-D-CH-FF044 (June, 14, 2006) citing Indigo Mortgage Services, Inc., HUDBCA No. 95-C-132-MR4 (May 12, 1995) citing Williston on Contracts § 1603, 3rd ed., vol. 13 (1970). Petitioner has failed to prove, by a preponderance of the evidence, that he signed under duress based upon the standard set forth in American Capital and Indigo Mortgage.

Moreover, in Cynthia Nelson v. Craig Nelson, 2005 WL 1943248 (Va.App.), a case in which the Appellant argued third party duress allegedly imposed upon her by her own attorney, the court established that:

> "duress may exist whether or not the threat is sufficient to overcome the mind of a man of ordinary courage, it being sufficient to constitute duress that one party to the transaction is prevented from exercising his free will by reason of threats made by the other and that the contract is obtained by reason of such fact."

Nelson, at 2.

The court determined that "unless these elements are present, however, duress does not exist...." (Id.) The court, citing Pelfrey v. Pelfrey, 25 Va. App. 239, 246, 487 S.E.2d 281, 284 (1997), concluded that "because duress is not readily accepted as an excuse, and must be proven by clear and convincing evidence, the wife [in Nelson] must meet a high evidentiary burden to prove her claim." Id. The court held that the Appellant had failed to meet this burden, and thus ruled against her. Id.

In the instant case, Petitioner alleges that he did not sign of his own free will but does not, however, specifically allege signing the completion certifications under duress or coercion as the Petitioner did in Nelson. He merely alleges that his signing of the documents was by instruction of another person. (Pet'r July Let.) Even though Petitioner admits signing the completion forms because he was "instructed to sign," and not because he wanted to sign, he also admits that he was "a victim of circumstance by not observing and also not understanding what was going on." (Id.) Beyond Petitioner's mere allegations, he has failed to date to meet his burden of proof by failing to establish, by a preponderance of the evidence, that: 1) he involuntarily accepted the will of the other party to the loan, and, 2) that he did not sign the documents under his own free will. Petitioner's claim must fail without sufficient evidence.

However, the Secretary provided as evidence a copy of the Completions Certificate for Property Improvements Petitioner signed on August 22, 1995, certifying that all improvements

were completed in accordance with the contract and *to his satisfaction*. (Sec'y Stat., ¶ 7, Ex. B, Dillon Decl., ¶ 8, attach.) (emphasis added). The Secretary also provided a copy of the TMI Financial Inc. inspection report dated October 24, 1995 that indicated all improvements listed on the contract were completed. (Sec'y Stat., ¶ 7, Ex. B, Dillon Decl., ¶ 8.) Since the Petitioner failed to meet his burden of proof, I find that the Secretary has met his burden of proof, and Petitioner has failed to successfully refute the evidence presented by the Secretary. Therefore, Petitioner's claim fails for lack of proof.

Finally, Petitioner states "we were victims of a scam on poor and old people." (Petitioner's July Letter ("Pet'r July Let."). Petitioner files, as evidence, a copy of a newspaper article, dated April 27, 2004, from the PostGazette.com ("PostGazette.com Article"), Pittsburgh, Pennsylvania, which involved the guilty pleas of the two partners of Zintron, Inc. The men pled guilty to tricking elderly people into signing up for inflated home equity loans they could not afford. However, the newspaper article submitted by Petitioner lacks credibility in establishing whether the alleged debt is non-existent or unenforceable. This Office issued three Orders to Petitioner to provide sufficient and credible evidence as support for his claim that the loan signed by him was a result of a scam. (Notice of Docketing, June 11, 2009; Order, June 26, 2009; and Order to Show Cause, July 23, 2009.) Petitioner responded to the Order to Show Cause with documentary evidence that remains insufficient in establishing whether the alleged debt was a result of a scam. Without such evidence Petitioner's claim again fails for lack of sufficient and credible documentary evidence.

This Office finds, therefore, that the claim that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

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 at 15% of Petitioner's disposable income, or $147.31 per pay period.

Vanessa L. Hall
Administrative Judge

November 12, 2009