
In the Matter of:

Sean A. Whitworth,

Petitioner

HUDBCA No. 03-A-NY-AWG19
Claim No. 52-0883319

Sean A. Whitworth
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Pro se

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For the Secretary

DECISION 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 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 May 6, 1992, Petitioner executed and delivered to R/C Manufactured Homes, Inc., a retail installment contract for the purchase of a manufactured home that was financed by Logan Laws Financial Corporation ("Logan Laws") and insured against nonpayment by Government National Mortgage Association (Secretary's Statement, hereinafter "Secy. Stat.," Exh. A). Petitioner subsequently defaulted on the note. Pursuant to 12 U.S.C. §1721(g), GNMA holds all right title and interest of Logan Laws. (Secy. Stat.¶ 3). The Secretary alleges that Petitioner is indebted to the Secretary in the following amounts: \$14,480.57 as the unpaid principal balance as of August 1, 2003; \$2,128.82 as the unpaid interest on the principal balance at 5% per annum through August 1, 2003; \$498.29 as the U.S. Department of Treasury Debt Management Service fee; and \$4,252.35 as the private collection agency (PCA) fee. (Secretary's Response to Order, Filed August 1, 2003).

Petitioner claims that he does not owe the debt. (Petitioner's Hearing Request form dated March 30, 2003). Petitioner's documentary submissions suggest that because of a natural disaster which destroyed his home and prevents him from living in his home, he is no longer responsible for repaying the above-mentioned debt. (Petitioner's Application for Disaster Relief, dated August 27, 1999).

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. The Petitioner has failed to comply with the Board's August 6, 2003 Order directing Petitioner to "file with the Board: (1) a reply to the Secretary's Statement; (2) a reply to the Secretary's Response to Order; and (3) any documentary evidence which will prove that all or part of the alleged debt is either unenforceable or not past due."

Petitioner has submitted no persuasive documentary evidence to substantiate his claim that he does not owe the debt. Moreover, certain documents which were submitted with Petitioner's request for a hearing, specifically, Petitioner's application for disaster relief and proof on a form of the Federal Emergency Management Agency that Petitioner's manufactured home was destroyed by a flood, do not prove, per se, that Petitioner was relieved from his legal obligation to repay sums due under the subject retail installment contract. Therefore, the Secretary's Statement and the allegations contained therein stand unrefuted. Without evidence to substantiate Petitioner's allegation that he does not owe this debt or that the loss of the manufactured home due to a natural disaster voided his obligations under the contract, Petitioner's claims must fail for lack of proof.

Petitioner may wish to negotiate repayment terms with the Department. However, 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). 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

For the reasons set forth above, 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

September 8, 2003