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In the Matter of:

**Franklin Harper,**

Petitioner

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HUDBCA No. 04-D-CH-AWG41

Claim No. 780524689

Franklin Harper,  
9413 W. University  
5548  
Odessa, TX 79764-8915

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 and Urban Development (“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 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 June 23, 1995, Petitioner executed and delivered to Vanderbilt Mortgage and Finance, Inc. (“Vanderbilt”) an installment note in the amount of \$37,058.45 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). On April 8, 2000, there was a fire in the trailer park next to Petitioner’s manufactured home. (Petitioner’s Letter, received October 28, 2004, hereinafter “Pet. Ltr.”). Petitioner filed four insurance claims on the manufactured home as a result of the fire. (Secy. Stat., Exh. B, Declaration of Brian Dillon, hereinafter “Dillon Decl.,” ¶ 8). Vanderbilt sent a letter dated July 3, 2001 to Petitioner’s attorney outlining the four insurance claims that Petitioner filed on the manufactured home on April 10, 2001. (Dillon Decl., ¶ 8). All four insurance claims, which included a claim for fire damage, a warped counter top, a broken counter top and lighting fixtures, were denied. *Id.* The letter states that no actual fire damage was done to the home, the counter top is a repair issue and with regard to the lighting fixtures, the warranty on the home had already expired. *Id.* The letter from Vanderbilt and the Declaration of Brian Dillon both state that Petitioner filed his insurance claims on April 10, 2001 but the claim receipts, which are part of the record, show that the claims were actually filed on April 10, 2000, as Petitioner states in his letter.

Petitioner failed to make payments as agreed in the note. (Secy. Stat., ¶ 3). Consequently, Vanderbilt assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54 (2003). (Secy. Stat., unmarked Exh.).

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice of Intent”), dated August 11, 2004, was sent to Petitioner. (Administrative Wage Garnishment Hearing Resolution, hereinafter “Pet. Hrg. Req.” unmarked Exh.). The Notice of Intent indicated that Petitioner owed HUD \$8,715.78. *Id.* However, the Secretary’s Statement, filed on September 17, 2004, states that Petitioner is indebted to the Secretary in the following amounts: \$6,411.68 as the unpaid principal balance as of September 13, 2004; \$350.73 as the unpaid interest on the principal balance at 3% per annum through September 13, 2004; and interest on said principal balance from September 14, 2004, at 3% per annum until paid. (Dillon Decl., ¶ 4).

In order to resolve these conflicting statements, the Secretary filed the Supplemental Declaration of Brian Dillon on February 17, 2005. (Supplemental Dillon Decl., hereinafter “Supp. Dillon Decl.”). According to the Supplemental Declaration, a Notice of Intent dated August 11, 2004 was issued by a private collection agency on behalf of HUD and the Department of Treasury. (Supplemental Declaration of Brian Dillon, hereinafter “Dillon Supp. Decl.,” ¶ 3”). The amount demanded includes Treasury and private collection agency fees. *Id.*

At the date of default, Petitioner owed the lender \$32,824.64 in principal and \$573.93 in interest. (Supp. Dillon Decl., Exh. D, Claim Calculation (Title I Manufactured Home Debt)). The best price obtainable for the property when sold was \$28,776.98. Id. Petitioner was given a credit for the \$28,776.98. (Dillon Supp. Decl., ¶ 5). This left Petitioner with a debt of \$4,047.66 plus \$573.93 in interest or \$4,621.59. (Dillon Supp. Decl., Exh. D). The repossession costs plus attorney's fees for the property totaled \$2,364.01. Id. These costs were added to Petitioner's debt. Id. Therefore, the total due as of the date of default was \$6,411.67 in principal and \$573.93 in interest, for a total of \$6,985.60. Id. At the date of default, another \$693.00 had also accrued on Petitioner's loan. Id. This fee was added to Petitioner's debt, bringing the balance to \$7,678.60. Id. HUD received a payment from the Treasury Offset Program (TOP) on April 2, 2004 in the amount of \$875.00. (Dillon Supp. Decl., ¶ 4). Petitioner was given a credit towards the balance on his account for the \$875.00. Id.

Therefore, Petitioner is currently indebted to HUD on the Note in the following amounts: \$6,411.67 as the unpaid principal balance as of November 30, 2004; \$391.93 as the unpaid interest on the principal balance at 3.0% per annum through November 30, 2004; and interest on said principal balance from December 1, 2004 at 3.0% per annum until paid. (Dillon Supp. Decl., ¶ 7).

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 contends that he does not owe the debt claimed by the Secretary because the home, which is the subject of this claim, was illegally repossessed. (Pet. Hrg. Req.). Petitioner states,

Vanderbilt took my home, because I changed insurance companies...Two years after buying the home, I wanted to change insurance companies. Vanderbilt threw a fit, and they threatened, if I did they would come get the home. So I kept their insurance...Then on 4-08-2000 there was a fire in the trailer park next to the home...on Monday, My wife got a hold of the insurance company. They said they would send out Julie Massey...to be their adjuster. She came out, then on 04-10-2000, 04-13-2000, 4-27-2000, I got letters denying any of my claims. Then on 4-27-2000 they cancelled my insurance, and before I could get different insurance, Vanderbilt wrote a new policy for HIGH RISK insurance. So when that insurance policy was almost up I changed insurance companies. Vanderbilt got mad and for[e]closed....After they took the home I got a letter stating that the home was to be sold at a private sale. I got no further letters from Vanderbilt stating how much, or when they sold the home for.

(Pet. Ltr., received October 28, 2004)

Petitioner signed a Retail Installment Contract – Security Agreement for the mobile home on June 23, 1995. The Contract specifically states:

**DELINQUENCY AND DEFAULT:** (emphasis in original)

In the event of my default, you will give me notice of the right to cure the default when required by law....If I have not cured the default within 30 days after the postmark date of the notice...you may foreclose on or repossess (emphasis added) the Manufactured Home and any other things covered by the security interest I have granted.

(Secy. Stat., Exh. A).

Once Petitioner defaulted on the loan, Vanderbilt had the right under the Retail Installment Contract to repossess the home.

Furthermore, the District Court of Ector County, Texas issued a Final Summary Judgment, dated February 21, 2002, which awarded possession and title to the manufactured home to Vanderbilt. (Dillon Decl., Exh. B).

Besides the letter referenced above, Petitioner has also submitted documentary evidence in support of his claim that the debt is not enforceable. This evidence includes photographs of the area where the manufactured home was located after Vanderbilt repossessed the home; photographs showing the proximity of the home that caught fire to Petitioner's manufactured home; a Notice of Private Sale and Right to Redeem Collateral from Vanderbilt dated May 15, 2002; medical bills for Petitioner and his wife; and medical records for Petitioner and his wife. While Petitioner's documentary evidence does show that the manufactured home was removed and that Vanderbilt gave him notice of their intent to sell the property, it does not substantiate his assertion that the home was repossessed illegally. Petitioner's assertion is insufficient evidence to show that the debt claimed by the Secretary is not past-due or enforceable.

The repossession of Petitioner's home does not relieve him of his obligation to pay the remaining balance on the loan. Repossession of the collateral by the lender does not relieve a debtor of liability. Marie O. Gaylor, HUDBCA No. 03-D-NY-AWG04 (February 7, 2003); Theresa Russell, HUDBCA No. 87-2776-H301 (March 24, 1988). Petitioner became liable for the debt when Petitioner signed a note. In order for Petitioner not to be held liable for the debt, there must either be a release in writing from the lender specifically discharging Petitioner's obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release. Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); Jesus E. And Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986). Petitioner has submitted no

evidence to establish the requirements for a valid release. Therefore, the Secretary has the right to enforce the obligation against Petitioner.

**ORDER**

For the reasons set for the 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.

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Jerome M. Drummond  
Administrative Judge

March 23, 2005