



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

In the Matter of:

James Visconto,
Petitioner

HUDOA No. 10-H-NY-AWG01
Claim No. 7711156530A

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For the Secretary

DECISION AND ORDER

On September 30, 2009, Petitioner made a request for a hearing concerning a proposed repayment schedule incident to a wage garnishment order sought by the Secretary relating to a debt owed to the U.S. Department of Housing and Urban Development ("HUD") that Petitioner claims does not exist. 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. (See 24 C.F.R. § 17.170(b).) This hearing is 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 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 a financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. (Id.) As a result, pursuant to 31 C.F.R. § 285.11(f)(4) this Office, on October 6, 2009, stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated October 6, 2009.)

Background

On June 18, 1985, Petitioner executed and delivered to The Philadelphia National Bank a Note (“Note”), in the amount of \$15,000.00, 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 (“Sec’y Stat.”), filed October 23, 2009, ¶ 2; Ex. A ¶ 1; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated October 21, 2009, ¶ 1, ¶ 3.) On September 23, 1985, the Note was assigned by the Philadelphia National Bank to the Redevelopment Authority of the City of Philadelphia. (Sec’y Stat., Ex. B, p. 1.) On October 11, 1991, the Redevelopment Authority of the City of Philadelphia attempted to assign the Note to Core States Bank, N.A., but they assigned the Note to “Core States, N.A.” (Sec’y Stat., Ex. A, p. 2.) Consequently, on May 30, 1997, the Redevelopment Authority of the City of Philadelphia executed a “Reassignment of Note and Mortgage” in which it assigned the Note executed by Petitioner to Core States Bank, N.A. (Sec’y Stat., Ex. A and B.) Petitioner failed to make payments as agreed in the Note, and the Note was subsequently assigned to HUD. (Sec’y Stat., ¶ 6; Ex. C.)

HUD has attempted to collect the amounts due under the June 18, 1985 Note, but Petitioner remains delinquent. (Sec’y Stat., ¶ 7; Ex. D, Dillon Decl. ¶ 4.) Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$5,150.05 as the unpaid principal balance as of September 30, 2009;
- (b) \$2,918.56 as the unpaid interest on the principal balance at 5% per annum through September 30, 2009; and
- (c) interest on said principal balance from October 1, 2009, at 5% per annum until paid.

(Sec’y Stat., ¶ 7; Ex. D, Dillon Decl., ¶ 4.) On August 7, 2009, a Notice of Intent to Initiate Administrative Wage Garnishment was mailed to Petitioner. (Sec’y Stat., ¶ 8; Ex. D, Dillon Decl., ¶ 5.) Petitioner was afforded an opportunity to enter into a written repayment agreement under terms agreeable to HUD pursuant to 31 C.F.R. 285.11(e)(2)(ii). (Sec’y Stat., ¶ 17; Ex. D, Dillon Decl., ¶ 6.) Petitioner did not enter into a written repayment agreement with HUD. (Id.)

Petitioner’s pay statements for the periods ending October 2, 2009 and October 9, 2009 indicate that Petitioner’s average weekly gross earnings total \$518.58. After deductions,

generally Petitioner's average weekly net disposable income totals \$405.03, 15% of weekly net disposable income would be \$60.76. (Ex. D, Dillon Decl., ¶ 8.) The Secretary proposes a repayment schedule of 15% of the Petitioner's disposable income, which is \$60.76 per week. (Sec'y Stat., ¶ 18.)

Discussion

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 or that the amount of the alleged debt is incorrect. Petitioner argues that the debt does not exist, and thus is not owed because: 1) the debt was discharged by bankruptcy, and, 2) he was unaware of its existence due to HUD's failure to record the lien.

Petitioner first claims that he does not owe the debt because he "declared bankruptcy and [the debt] was discharged 3/14/06." (Petitioner's Hearing Request ("Pet'r. Hr'g. Req."), filed September 30, 2009.) Petitioner further asserts "We did Chapter 13 because [t]he only costs were my house (Mort.PHF) and gas co. (lien)[.] These were both satisfied. Any indebtedness I had could have been included & paid, but only these 2 were involved." (Id.) Petitioner's assertions of bankruptcy lacked the necessary support from documentary evidence, however, as Petitioner never submitted evidence sufficient enough to substantiate his claim that the alleged debt was discharged by bankruptcy.

On three occasions this Office ordered Petitioner to file documentary evidence to prove "that the subject debt has been discharged by the U.S. Bankruptcy Court," and to submit documentary evidence that includes "an order of discharge, or schedule of creditors which lists the subject debt to HUD or to the lending institution which made the HUD insured loan to Petitioner as discharged, not dismissed, by the U.S. Bankruptcy Court." (Notice of Docketing, p. 2, dated October 6, 2009; Order, dated October 28, 2009; Order to Show Cause, dated November 19, 2009.) To date, Petitioner has failed to comply with the Orders issued by this Office. As a result, Petitioner has not met his burden to prove that the debt is non-existent due to discharge by bankruptcy. This Office has held that assertions without evidence are insufficient 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). Thus, this Office finds that Petitioner's claim of debt discharged by bankruptcy fails for lack of proof.

Second, Petitioner states "I feel this loan should be dismissed as it has never appeared on any record or legal document and we have never been contacted about this loan since 1997." (Pet'r Hrg. Req.) While Petitioner argues that he was "never contacted about this loan," the record reflects otherwise. Petitioner has been contacted and offered payment options with regard to the subject debt since the dismissal of his case by the Bankruptcy Court. (Sec'y Stat., ¶ 8, Ex. D, Dillon Decl., ¶¶ 4-6.) According to the record, Petitioner was issued a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated, August 7, 2009 to which Petitioner responded by submitting a request for hearing. (Id.) In the Request for Hearing form

submitted and signed by Petitioner, it reads “I have *read and understand* the Important Notice About Administrative Wage Garnishment.” (emphasis added) (Pet’r. Hrg. Req.) Additionally, upon review of the terms of the Note signed by Petitioner, Petitioner agreed that “If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount.” (Sec’y Stat., Ex. A, ¶ 4(c)). Thus, even the terms agreed to by Petitioner do not necessitate recordation of the security interest as a notice requirement in administrative wage garnishment cases like the instant case.

Even though Petitioner argues lack of notice due to HUD’s failure to record the lien, notice by recordation of security interest is not a notice requirement for debt collection in administrative wage garnishment cases. (See 31 C.F.R. § 285.11 (e)(1)-(3)). The only notice required, by regulation, to be given to Petitioner is the issuance of a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings. (Id.) Therefore, Petitioner’s argument that the debt is unenforceable because he was not given notice by recordation of lien is without merit, and as a result, I find Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

As a final point, Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including a *determination against a noncomplying party*. (emphasis added).

Accordingly, because Petitioner has also failed to comply with any of the Orders issued by this Office, I find that Petitioner’s non-compliance to the Orders issued by this Office provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

ORDER

For the reasons set forth above, I find the debt that 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 the 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 at \$60.76 per week.



Vanessa L. Hall
Administrative Judge

January 21, 2010