



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

In the Matter of:

Terry M. Ezell,

Petitioner

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HUDOA No. 10-H-NY-AWG34
Claim No. 770803960-0A

Terry M. Ezell
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Pro se

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For the Secretary

DECISION AND ORDER

On January 15, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and 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 administrative judges of this Office have been designated to determine whether the Secretary of Housing and Urban Development (“Secretary”) may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. 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.* Pursuant to 31 C.F.R. § 285.11(f)(4) and (f)(10), on January 20, 2010, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision, unless a wage garnishment order had previously been issued against Petitioner.

Background

On June 29, 1988, Petitioner executed and delivered to A-1 Mobile Homes a Retail Installment Sales Contract and Security Agreement (“Note”) in the amount of \$21,708, 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 That the Petitioner’s Debt is Past Due and Legally Enforceable and Secretary’s Proposed Repayment Schedule (“Sec’y Stat.”), filed January 29, 2010, ¶ 2, Ex. A.) On that same day, the Note was assigned by A-1 Mobile Homes to Banc Home Savings Association. (Sec’y Stat., ¶ 3, Ex. A.) The Note was then assigned by Banc Home Savings Association to HSA Mortgage Company. (Sec’y Stat., ¶ 4, Ex. A.) Subsequently, HSA Mortgage Company assigned the Note to G.E. Capital Asset Management Corporation. (Sec’y Stat., ¶ 5, Ex. A.)

Petitioner failed to make payments as agreed in the Note. (Sec’y Stat., ¶ 6.) Consequently, on March 8, 1995, G.E. Capital Asset Management Corporation assigned the Note to the United States of America in accordance with 24 C.F.R. § 201.54. (Sec’y Stat., ¶ 6, Ex. A.) The Secretary is the holder of the Note on behalf of the United States of America. (*Id.*)

The Secretary has made efforts to collect this debt from Petitioner, but Petitioner remains in default. (Sec’y Stat. at ¶ 7, Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$12,880.10 as the unpaid principal balance as of January 26, 2010;
- (b) \$1,691.14 as the unpaid interest on the principal balance at 3% per annum through January 26, 2010; and
- (c) interest on said principal balance from January 27, 2010, at 3% per annum until paid.

(*Id.*)

A Notice of Intent to Initiate Wage Garnishment dated December 2, 2009 was sent to Petitioner. (Sec'y Stat., ¶ 8, Ex. B, Dillon Decl., ¶ 5.) The Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under the terms agreeable to HUD in accordance with 31 C.F.R. § 285.11(e)(2)(ii). (Sec'y Stat., ¶ 9, Ex. B, Dillon Decl., ¶ 6.) Petitioner has not entered into a written repayment agreement in response to the December 2, 2009 Notice. (Sec'y Stat., ¶ 8, Ex. B, Dillon Decl., ¶ 5.)

A Wage Garnishment Order was issued to Petitioner's employer by HUD on January 4, 2010. (Sec'y Stat., ¶ 10, Ex. B, Dillon Decl., ¶ 7.) Based on the issuance of the Wage Garnishment Order, HUD received \$64.77 posted to Petitioner's account on January 25, 2010. (Sec'y Stat., ¶ 11, Ex. B, Dillon Decl., ¶ 9.) This payment was credited towards the Petitioner's debt and is reflected in the outstanding balance now due. (Sec'y Stat., ¶ 11, Ex. B, Dillon Decl., ¶ 9.)

Pursuant to 31 C.F.R. § 285.11(i)(A), the Secretary's proposed repayment schedule is \$64.44 weekly or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 12, Ex. B, Dillon Decl., ¶ 8.)

Discussion

Petitioner challenges collection of the debt on the grounds that the terms of the proposed repayment schedule would create a financial hardship. Petitioner asserts, "It is a hardship[.] [I] only work 36 hours a week[.] I cannot pay by [sic] bills[.] [I only have] one income[.]" (Request for Hearing, "Pet. Hr'g. Req." dated January 15, 2010). Petitioner adds that he is "going to be homeless." (Petitioner's Documents ("Pet'r Mar. Docs"), filed March 1, 2010.)

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship. In support of Petitioner's argument, Petitioner provided this Office with copies of bills and payments, financial statements and pay stubs. (Pet'r Mar. Docs; Petitioner's Documents ("Pet'r Feb. Docs."), filed February 16, 2010.)

The documentary evidence submitted by Petitioner as support for his claim of hardship includes pay statements reflecting a weekly pay period, car payments, bank statements, mortgage payments, various types of insurance payments, utility bills, and a multitude of credit card and personal loan bills. (Pet'r Feb. Docs.; Pet'r Mar. Docs.)

According to Petitioner's pay statement, the pay period ending January 17, 2010 indicates that his weekly gross pay totals \$523.80. (Pet'r Mar. Docs.) Petitioner's disposable income is determined "after the deduction of health insurance premiums and any amounts required by law to be withheld . . . [including] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). After deducting

allowable deductions, Petitioner is left with a disposable weekly income of \$318.71 that calculates to be a monthly disposable income of \$1,274.84. (*Id.*)

Petitioner also submitted documentary evidence, along with proofs of payment, of the following essential monthly household expenses: property tax, \$511.23 monthly average; automobile insurance, \$67.00 monthly; electric, water and sewer, \$309.00 monthly; groceries, \$254.40 monthly average; phone, \$43.66; home insurance, \$61.45 monthly; and total minimum payments of two credit cards (HSBC Visa Gold, Capital One) owed by Petitioner, \$90. (*Id.*)

Petitioner has a monthly charge of \$85.00 for Comcast Cable Television, but the expense was not credited towards Petitioner's essential monthly expenses because this expense is not considered an essential living expense. Otherwise, Petitioner's essential household expenses total \$1,336.74 monthly.

Petitioner's monthly essential living expenses of \$1,336.74 exceed his disposable pay of \$1,274.84 by \$61.90. A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$191.23 per month and would leave Petitioner with a negative balance of (-\$253.12). A 10% garnishment rate would lower Petitioner's garnishment amount to \$127.48 per month and would leave Petitioner with a negative balance of (-\$189.38). A 5% garnishment rate would lower Petitioner's payments to \$63.74 per month and would leave Petitioner with a negative balance of (-\$125.64).

Pursuant to 31 C.F.R. § 285.11(k)(3), this Office has the authority to order garnishment at a lesser rate based upon the record before it, particularly in cases where financial hardship is found. Upon due consideration, this Office finds that the Petitioner has submitted sufficient documentary evidence to substantiate his claim that the administrative wage garnishment of his disposable income, in the amount sought by the Secretary, would cause a financial hardship. To impose an administrative wage garnishment against the Petitioner, at any rate, would constitute a financial hardship to Petitioner.

While the Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, a garnishment amount at any percentage of Petitioner's disposable income would constitute a financial hardship sufficient enough to forego collection at this time.

ORDER

Based on the foregoing, I conclude that an administrative wage garnishment would create a financial hardship for the Petitioner at this time. The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment shall remain indefinitely. Therefore, it is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment because of Petitioner's financial circumstances at this time.

However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment if, in the future, Petitioner's income increases or his expenses for necessities are reduced.



Vanessa L. Hall
Administrative Judge

June 22, 2010