



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

In the Matter of:

**LOUIS UHEREK,**

Petitioner.

HUDOA No. 10-M-CH-AWG51  
Claim No. 771148399

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Pro se

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For the Secretary

**DECISION AND ORDER**

On February 16, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to 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 administrative judges of this Office are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if 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 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 February 17, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

### **Background**

On February 16, 1995, Petitioner executed and delivered a FHA Title I Home Improvement Retail Installment Contract and Disclosure Statement (“Note”) to Home Improvement, Inc. in the amount of \$4,800.00 for a home improvement loan 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 March 10, 2010, ¶ 1.) The Note was contemporaneously assigned by Home Improvement Inc., to First Suburban Investment, Inc. (Sec’y Stat., Ex. 1, Note at p. 2.) After default on the loan by Petitioner, U.S. Bank National Association f/k/a First Bank (N.A.) assigned the Note to the United States of America under the regulations governing the Title I Insurance Program. (Sec’y Stat., Ex. 1, Note at p. 3-4.)

HUD has attempted to collect the amounts due under the Note but Petitioner remains delinquent. HUD has filed a Statement alleging that Petitioner is indebted to HUD in the following amounts:

- (a) \$3,015.70 as the unpaid principal balance as of January 30, 2010;
- (b) \$263.97 as the unpaid interest on the principal balance at 5% per annum through January 30, 2010; and
- (c) interest on said principal balance from February 1, 2010 at 5% per annum until paid.

(Sec’y Stat., ¶ 4; Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated February 26, 2010, ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) was sent to Petitioner on January 19, 2010 (Sec’y Stat. ¶ 5). Petitioner was afforded the opportunity to enter into a repayment agreement, but failed to enter into such an agreement. (Sec’y Stat. ¶ 6.) The Secretary has made several attempts to obtain Petitioner’s pay stub and as of February 26, 2010, Petitioner has not provided HUD with a current pay stub. (Sec’y Stat. ¶ 7.) The Secretary’s proposed repayment schedule is \$100.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner’s disposable pay. (Sec’y Stat. ¶ 8.)

### **Discussion**

In Petitioner’s Request for Hearing, Petitioner disputes the amount of the debt and argues that the terms of the proposed repayment schedule would create a financial hardship. (Petitioner’s Hearing Request (“Pet’r’s Hr’g Req.”), filed February 16, 2010.) Specifically, Petitioner states that his “wife has health problems.” (*Id.*)

Petitioner is permitted to present evidence that no debt exists or that the amount is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In the Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), issued to Petitioner on February, 17, 2010, this Office ordered Petitioner to “present evidence that the alleged debt is either unenforceable or not past due.” The Notice of Docketing also instructed Petitioner to file “documentary evidence which will prove that repayment of the debt would cause a financial hardship to Petitioner”. (*Id.*) Petitioner did not respond to the Notice of Docketing. On April 1, 2010, this Office again ordered Petitioner to file documentary evidence to prove that the Note was either paid or is unenforceable on or before April 30, 2010. (Order, issued April 1, 2010.) The Order specifically stated that, “[i]f Petitioner claims that repayment of the debt would create a financial hardship, Petitioner must file proof consisting of receipts, checks, or other proof of payment of necessary household expenses.” (emphasis in original) (*Id.*) The Order also stated: “Failure to comply with this Order shall result in a decision based on the documents in the record of this proceeding.” (emphasis in original)

Petitioner has failed to submit any evidence that the alleged debt is unenforceable or not past due and has, therefore, failed to comply with the Orders issued by this Office. This Office has held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” *Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing, *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Since Petitioner does not offer any evidence that would prove that the debt is unenforceable, I find that Petitioner’s argument fails for want of proof.

### **ORDER**

For the reasons set forth above, 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 to the extent authorized by law.



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H. Alexander Manuel  
Administrative Judge

August 4, 2010