



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

In the Matter of:

FRANKIE W. MOORE,

Petitioner.

HUDOA No. 10-M-CH-AWG73
Claim No. 52-0883319DA

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Pro se

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For the Secretary

DECISION AND ORDER

On April 8, 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 April 21, 2010, this Office 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 April 21, 2010.)

Background

On or about September 11, 1990, Petitioner executed a Manufacturer’s Home Retail Installment Sales Contract and Security Agreement (“Note”) to finance the acquisition of a mobile home. (Sec’y Stat. ¶ 1; Sec’y Stat. Ex. 1, Note.) The Note was signed by Petitioner and Twin City Housing. (Sec’y Stat. Ex. 2, Declaration of Paul St. Laurent, III, Director, Mortgage Backed Securities Monitoring Division of Ginnie Mae (“St. Laurent Decl.”) ¶ 3.) The Note was then assigned to Shelter America Corp (“SAC”). (*Id.*) SAC was defaulted by the Government National Mortgage Association (“Ginnie Mae”) as an issuer of Mortgage Backed Securities (“MBS”) due to its failure to comply with Ginnie Mae MBS program requirements. (St. Laurent Decl. ¶ 4.) As a result of the default of SAC, all of SAC’s rights and interest in Petitioner’s loan were assigned to Ginnie Mae by virtue of an assignment contained in the Guaranty Agreement entered into between SAC and Ginnie Mae. (Sec’y Stat. ¶ 2; Sec’y Stat. Ex. 2, St. Laurent Decl. ¶¶ 4-5.)

HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec’y Stat. ¶ 3.) HUD alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$14,167.39 in unpaid principal balance;
- (b) \$2,852.79 as the unpaid interest on the principal balance at 13.25% per annum through August 28, 2002; and
- (c) interest on said principal balance from August 29, 2002 until paid.

(St. Laurent Decl. ¶ 6.) A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated March 29, 2010, was sent to Petitioner. (Sec’y Stat. ¶ 5.) In the Notice, Petitioner was afforded the opportunity to enter into a written repayment agreement. (St. Laurent Decl. ¶ 7.) The Secretary proposes a repayment schedule of 15% of Petitioner’s monthly disposable income. (Sec’y Resp. to Order to Show Cause, ¶ 4.)

Discussion

In Petitioner’s hearing request, Petitioner argues that he does not owe the debt because his liability therefore was extinguished by the terms of his divorce decree. (Pet’r’s Hr’g Req., filed April 8, 2010.) Specifically, Petitioner argues that:

Tianna Moore was awarded the house in question along with any debt that may incur [sic] in divorce...Tianna has since filed bankrupt[t]cy to get out of repay [sic] her part and I am not gonna [sic] repay the whole thing. Since she lived in the house and she was the one to let it go back...It was her obligation to repay this not mine...If need [sic] I can resend the part of the decree that states that she was awarded the house and the land.

(Pet’r’s E-mail, sent Dec. 22, 2010.)

In support of his argument, Petitioner included an unsigned, incomplete copy of a divorce decree with his hearing request. (Pet'r's Hr'g Req., Divorce Decree, attached.) The divorce decree states in part that, "[a]ll encumbrances, ad valorem taxes, liens, assessments, or other charges due or to become due on the real and personal property awarded to [Tianna Marie Moore] in this decree unless express provision is made in this decree to the contrary." (Pet'r's Hr'g Req., Divorce Decree.) Although the divorce decree purports to make Petitioner's ex-wife liable for the debt in this case, this Office has held that "[w]here a property settlement or divorce decree purports to release one spouse from a joint obligation, the claims of the existing creditors against the spouse are not affected unless the creditors were parties to the action." *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016, at p. 3 (May 10, 2004) (citing *Deborah Gage*, HUDBCA No. 86-1727-F286 (Jan. 14, 1986)). Since HUD was not a party to the divorce proceedings, Petitioner's divorce decree only determined the rights and liabilities between Petitioner and his ex-wife. See *Kimberly S. King (Theide)*, HUDBCA No. 89-4587-L74 (Apr. 23, 1990). Petitioner may wish to enforce the decree against his ex-wife in state or local court to recover monies paid to HUD by him to satisfy this obligation. Nevertheless, this Office finds that Petitioner remains jointly and severally liable for this debt because the divorce decree does not release him from his obligation to HUD.

Petitioner also states that, "I do not feel that i [sic] owe this debt and can not repay this debt, do to the fact that I know [sic] have other obligations." (Pet'r's E-mail, sent Dec. 22, 2010.) Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *Shone Russell*, HUDOA No. 09-H-NY-KK15 (Jun 25, 2009) (citing *Raymond Kovalski*, HUDBCA No. 87-1681-G18 (Dec. 8, 1986)). However, the existence of financial hardship may mitigate the amount of the garnishment allowable by law. 31 C.F.R. §285.11(k)(3).

On four separate occasions, this Office ordered Petitioner to present evidence that the terms of the repayment schedule would cause Petitioner a financial hardship. (Notice of Docketing; Order, dated June 17, 2010; Order, dated October 4, 2010; Order, dated November 30, 2010.) The June 17th, October 4th, and November 30th Orders stated that, "[f]ailure to comply with this Order shall result in a decision based on the documents in the record of this proceeding." As of the date of this Decision and Order, Petitioner has failed to submit any documentary evidence to prove that administrative wage garnishment in the amount proposed by the Secretary would cause Petitioner a financial hardship. 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 in this case is unenforceable at this time, this Office finds 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.



H. Alexander Manuel
Administrative Judge

January 6, 2010