



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

In the Matter of:

Brian Allen,
Petitioner

HUDOA No. 11-H-CH-AWG147
Claim No. 780695786

DECISION AND ORDER

On September 20, 2011, Petitioner filed a request for 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 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 HUD Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. 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 September 22, 2011, 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 September 22, 2011.)

Background

On January 16, 1995, Petitioner executed and delivered a Retail Installment Contract – Security Agreement ("Note") in the amount of \$39,008.95 to Nationwide of North Texas, Inc. (Secretary's Statement ("Sec'y Stat."), ¶ 1, filed October 12, 2011; Ex. D, Note.) After default by Petitioner, the Note was assigned to Vanderbilt Mortgage and Finance, Inc. under the regulations governing the Title I Insurance Program. (Sec'y Stat., ¶ 2; Ex. E, Declaration of Brian Dillon, Acting Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), ¶ 3; Ex. F, Assignment to HUD.) Vanderbilt later assigned the Note to HUD. (*Id.*)

HUD has attempted to collect the amount due under the Note, but Petitioner is delinquent and remains in default. (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 4.) As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$15,285.84 as the unpaid principal balance as of August 30, 2011;
- (b) \$3,663.62 as the unpaid interest on the principal balance at 4% per annum through August 30, 2011;
- (c) \$4,325.61 as the unpaid penalties and administration costs through August 30, 2011; and
- (d) interest on said principal balance from September 1, 2011 at 4% per annum until paid.

(Sec'y Stat., ¶ 5, Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated August 15, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec'y Stat., ¶ 4; Dillon Decl. ¶ 6.) Petitioner has not entered into such an agreement. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 6.)

A copy of Petitioner's recent pay statement reveals that Petitioner earns a weekly disposable salary of \$687.10. (Sec'y Stat., ¶ 8; Ex. B, Pay Statement.) Based on the pay statement, the Secretary proposes a repayment schedule of \$61.00 per week, which represents 25% of Petitioner's disposable income, less a \$110.77 weekly deduction for child support, as required by 31 C.F.R. § 285.11(i)(3)(ii)(B). (Sec'y Stat., ¶ 9, Dillon Decl., ¶ 9.)

Discussion

Petitioner does not dispute the existence of the debt. Rather, he contends that he does not owe the full amount alleged by the Secretary. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed September 20, 2011.) Petitioner's Hearing Request states, "No credits listed. House was sold and two income refund (tax return) checks not listed." (*Id.*) Thus, Petitioner is claiming that the two offsets of his federal income tax returns and the proceeds from the sale of Petitioner's house were never applied to the alleged debt, or credited towards the remaining balance of the debt that is the subject of this proceeding.

HUD counters Petitioner's argument by stating that "a Claim Calculation Worksheet dated October 3, 2011 outlines the number of payments made by Petitioner, Date of Default, Best Price Obtainable for the sale of the manufactured home, and repossession and preservation costs." (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 8.) As support, the Secretary provided a copy of the Claim Calculation Worksheet in which the "Best Price Obtainable" of \$12,325.00 represented the home's appraisal value or its repossession sale price, whichever was greater. (Sec'y Stat., Ex. A.) As further support, the worksheet showed an unspecified amount of \$371.00 in a single payment towards the alleged debt made to HUD by Petitioner. The Secretary also provided a

copy of Petitioner's Case Reconstruction Report that also identified the payments that were credited against the balance of the alleged debt.

To date, Petitioner has failed to meet his burden of proof because he failed to provide evidence in support of his claim that neither the tax return offsets nor the proceeds from the sale of the home were ever applied to the alleged debt, despite being ordered on three occasions to do so. (See Notice of Docketing, Order, and Stay of Referral, dated September 22, 2011; Order, November 16, 2011; Order to Show Cause, December 30, 2011.)

Next, the Secretary states that Petitioner had raised a claim of financial hardship in this case. After a careful examination of the record, there was no evidence that such a claim was raised by Petitioner. But, even if Petitioner had claimed financial hardship, the Secretary's position that "evidence of hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and legally enforceable" was in error in this case. (Sec'y Stat., ¶ 7.) Unlike administrative offset cases, the Court is permitted to consider evidence of financial hardship in administrative wage garnishment cases and, as such, would have been permitted to consider such evidence in the instant case. See 31 C.F.R. §§ 285.11(f)(8)(ii), (k)(1), and (k)(2). *Billy Butler*, HUDOA 09-H-CH-AWG88, dated September 25, 2009; see also, *Herman Harris (Reopen Decision)* HUDOA 09-H-CH-AWG100, dated September 18, 2009.)

As a final point, Rule 26.4(c) 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, I find that, pursuant to Rule 26.4(c), Petitioner's non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding is past due and enforceable in the amount alleged 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 in the amount of \$61.00 per week.



Vanessa L. Hall
Administrative Judge

February 14, 2012