



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

In the Matter of:

**Lloyd Peña,**

Petitioner

HUDOA No. 11-H-CH-AWG64  
Claim No. 721006334

Lloyd Peña  
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San Angelo, TX 76902-0727

*Pro se*

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For the Secretary

**DECISION AND ORDER**

On March 23, 2011, Petitioner requested 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"). (Pet'r's Hr'g Req., filed March 23, 2011.) 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. 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 March 24, 2011, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order

had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral, dated March 24, 2011.)

### **Background**

On January 2, 2007, Petitioner executed and delivered a Partial Claims Promissory Note (the "Note") payable to the order of the Secretary in the amount of \$4,399.52. (Secretary's Statement ("Sec'y Stat."), filed April 6, 2011, ¶ 2; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated April 5, 2011, ¶ 4.) The Note was executed and delivered to evidence a loan that was made by HUD to Petitioner as a means of providing foreclosure relief by payment of arrearages on his primary FHA-insured mortgage. (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 4.) The Note cited specific events that made the debt become due and payable, one of those events being if Petitioner has paid in full all amounts due under the primary note insured by the Secretary. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 4.) On or about September 23, 2008, the FHA Insurance on the first mortgage was terminated, as the mortgagee indicated that the mortgage was paid in full. (Dillon Decl., ¶ 4.)

Petitioner is currently in default on the Note. (Sec'y Stat., ¶ 6.) The Secretary has made efforts to collect from the Petitioner other than by administrative wage garnishment but has been unsuccessful. (*Id.*; Dillon Decl., ¶ 5.) The Secretary claims that Petitioner is indebted in the following amounts:

- (a) \$4,399.52 as the unpaid principal balance as of March 30, 2011;
- (b) \$198.00 as the unpaid interest on the principal balance at 3% per annum through March 30, 2011; and
- (c) interest on said principal balance from April 1, 2011 at 3% per annum until paid

(Sec'y Stat., ¶ 7; Dillon Decl., ¶ 5.) A Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings, dated February 10, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 6.) 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., ¶ 9; Dillon Decl., ¶ 7.) As of April 5, 2011, Petitioner has not entered into a repayment agreement. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 7.) A Wage Garnishment Order, dated March 14, 2011, was issued to Petitioner's employer by the Department of Treasury, Financial Management Service. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 8.)

The Secretary's proposed repayment schedule is \$140.00 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., ¶ 11; Dillon Decl., ¶ 9.)

### **Discussion**

Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), if Petitioner disputes the existence or amount of the debt the Petitioner "must present, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect." Petitioner objects to the proposed administrative wage garnishment on two grounds: (1) Petitioner's wife, as co-signer, is obligated to pay half of the debt; and, (2) the proposed garnishment amount would create a financial hardship for Petitioner. (Petitioner's Documentary Evidence ("Pet'r's Doc. Evid."), filed May 2, 2011.)

First, Petitioner claims that his wife should pay half of the debt allegedly owed. More specifically, Petitioner states:

Since the amount of the promissory note . . . is signed and agreed by my ex-wife and myself, I am obligated to pay the whole amount back since I have the house and [sic] was paid off by me. I want to have her pay half of the due amount and I will pay the other half.

(Pet'r's Doc. Evid.) Furthermore, Petitioner stated that he "will agree to pay payments on half that is owed" because "Shawna Peña also owes half of this amount." (Pet'r's Hr'g Req.) To support his argument, Petitioner submitted a copy of his ex-wife's pay stub, indicating that she earns \$732.60 bi-weekly.

This Court has consistently maintained that co-signers of a loan are jointly and severally liable to the obligation, and as a result, "a creditor may sue the parties to such obligation separately or together." *Kelvin I. Stevens*, HUDOA No. 11-H-NY-AWG78, at 3 (June 20, 2011) citing *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). As such, "the Secretary may proceed against any co-signer for the full amount of the debt" because each co-signer is jointly and severally liable for the obligation. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). For Petitioner not to be held liable for the subject debt, he must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release him from his obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

In the instant case, Petitioner has failed to produce evidence of a written release from his obligation to pay the alleged debt, or evidence of valuable consideration paid to HUD in satisfaction of the debt that, if presented, would otherwise render the alleged debt unenforceable. I find, therefore, without proof of a written release, Petitioner remains legally obligated to pay the entire amount of the subject debt as a co-signor on the Note. Petitioner may seek to enforce, in the state or local court, the terms of the divorce decree against his ex-wife so that Petitioner may recover from his ex-spouse monies he paid to HUD in order to satisfy this legal obligation. See *Michael York*, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3; see also *Anna L. Kestner*, HUDBCA No. 99-D-NY-Y275 (May 23, 2000) (citing *Joy A. Forbes*, HUDBCA No. 93-C-NY-R906 (Dec. 20, 1993)) ("Petitioner may have a right of action against her former husband, based on the divorce decree, but the Secretary is not prevented from enforcing the debt against Petitioner . . .").

Second, Petitioner states that the proposed administrative wage garnishment would result in financial hardship. More specifically, Petitioner states that, "[w]hen your wage garnishments start, I will be left next to nothing for living expenses." (Pet'r's Letter, filed April 11, 2011.) In support of his financial hardship claim, Petitioner has submitted copies of bi-weekly pay statements, copies of bills, a copy of a receipt of payment, and a bank transaction print-out. Petitioner's bi-weekly pay statements for the pay periods from April 3, 2010 to April 15, 2011 indicate that Petitioner's

average bi-weekly gross pay is \$881.23, or \$1,776.50 monthly. (Pet'r's Evid.) The Secretary is authorized to garnish up to 15% of the debtor's disposable pay, which is determined "after the deduction of health insurance premiums and any amounts required by law to be withheld. . . . includ[ing] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). After subtracting allowable deductions for federal tax, \$89.63; Medicare, \$25.69; Social Security, \$97.11; and health insurance, \$138.83, Petitioner is left with a monthly disposable income of \$1,420.16. (Pet'r's Evid.)

Petitioner submitted documentary evidence of the following essential monthly household expenses: gas, \$26.59; water, \$99.70; electricity, \$169.08; phone, \$228.96; and child support, \$731.11. The remaining expenses were claimed by Petitioner but were not included as essential household expenses because Petitioner failed to substantiate whether these expenses were recurring, monthly expenses, instead of one-time only expenses: Samco Finance loan, \$14,831.94 (balance only); and, Bank of America ACH Debit, \$181.00. (Pet'r's Evid.) Thus, based upon the evidence presented, Petitioner's essential household expenses total \$1,255.44 monthly.

Petitioner's disposable income of \$1420.16 exceeds his monthly living expenses of \$1,255.44 by \$164.72. A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$213.02 per month, leaving Petitioner with a negative balance of (-\$48.30). A 10% garnishment rate would result in a garnishment amount of \$142.01 per month, leaving a positive balance of \$22.71. A 5% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$71.01, leaving a positive balance of \$93.71. This Office has the authority to order a garnishment at a lesser rate based upon the record before it. *See* 31 C.F.R. § 285.11(k)(3). Petitioner has submitted sufficient documentary evidence to substantiate that the administrative wage garnishment of his disposable income, in the amount proposed by the Secretary, would create a financial hardship. To impose an administrative wage garnishment against the Petitioner, at any rate, would constitute an extreme financial hardship for 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.

Finally, Petitioner wants to make a payment arrangement to pay the balance owed on the alleged debt and states that he "would prefer to pay in monthly payment versus a wage garnishment." (Pet'r's Evid.) This Office is not authorized to extend, recommend, or accept any payment or settlement offer on behalf of HUD. Petitioner may wish to discuss this matter with Counsel for the Secretary or submit a HUD Office Title I Financial Statement (HUD Form 56142) to Lester J. West, Director, HUD Albany Financial Operations Center, Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

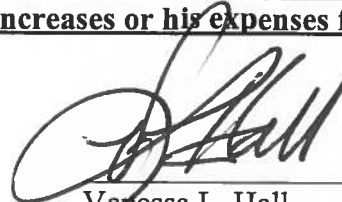
#### **ORDER**

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.**



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Vanessa L. Hall  
Administrative Judge

August 18, 2011