



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

In the Matter of:

Jose Aguiar,

Petitioner

HUDOA No. 11-H-NY-AWG19
Claim No. 780708977

Jose Aguiar
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Sussex, NJ 07461

For Petitioner

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For the Secretary

RULING ON SECRETARY'S MOTION TO DISMISS

Petitioner was notified by a Notice of Intent that, pursuant to 31 U.S.C. §§ 3716 and 3720A, the Secretary of the U.S. Department of Housing and Urban Development ("HUD") intended to seek offset by the United States Department of the Treasury of certain Federal payments due to Petitioner to recover a claimed past due, legally enforceable debt of Petitioner to HUD.

Petitioner filed a timely request to present evidence that the debt was not past due or not legally enforceable. Pursuant to 24 C.F.R. §§ 17.150-17.170 and 20.4(b), the administrative judges of the HUD Office of Appeals are authorized to determine whether these debts are past due and legally enforceable. As a result of Petitioner's request, referral of the debt to the U.S. Department of the Treasury was temporarily stayed by this Office October 21, 2010.

On November 3, 2010, a Motion to Dismiss ("Dismissal") was filed on behalf of the Secretary stating that "Based on the pay stub provided by Petitioner, it shows that his pay is being garnished at 15% by another creditor. It further shows that he is currently repaying loans from his 401K plan, therefore, HUD has determined that any additional wage garnishment at this time would constitute a financial hardship." (*See Dismissal, Exhibit A.*) The Secretary also requested that "this matter be dismissed without prejudice to review the application at such time Petitioner should become eligible for wage garnishment." (*Dismissal, p.1.*)

Upon due consideration, the Secretary's Motion to Dismiss is **GRANTED**. It is hereby **ORDERED** that the Secretary shall not seek to collect this debt by means of administrative wage garnishment of any Federal payments due to Petitioner because collection of the debt would create a financial hardship.

The Stay of Referral of this matter to the U.S. Department of the Treasury remains in place indefinitely. However, the Secretary may renew the application at such time as Petitioner should become eligible for wage garnishment.

This matter is **DISMISSED WITHOUT PREJUDICE**.



Vanessa L. Hall
Administrative Judge

November 15, 2010