

Office of Appeals
U.S. Department of Housing and Urban Development
Office of Hearings and Appeals
Washington, D.C.

In the Matter of:

THOMAS HAIRE,

Petitioner

HUDOA No. 11-M-CH-AWG132

Claim No. 721006854

Date of Order: May 2, 2012

DECISION AND ORDER

On August 22, 2011, Petitioner filed a request for 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 Secretary may collect the alleged debt in this case by means of administrative wage garnishment. 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. § 17.81. 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 a 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) and (f)(10), on August 24, 2011, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision.

Background

This action was brought on behalf of the Secretary of the U.S. Department of Housing and Urban Development (“HUD”) pursuant to 31 U.S.C. § 3720A. Sec’y Stat. ¶1,

As a means to providing foreclosure relief, HUD advanced funds to the FHA-insured lender to bring Petitioner’s mortgage current. On or about December 20, 2006, Thomas Haire (“Petitioner”) executed and delivered to the Secretary of HUD, a Subordinate Note (“Note”) in favor of the Secretary of the HUD. (Sec’y Stat. ¶2, Exh. A); Declaration of Brian Dillon,

Director, Asset Recovery Division, Financial Operations Center of the United States Department of Housing and Urban Development (HUD) at ¶1, Exh. B-1.

The amount to be repaid under the Note was \$11,020.80. The Note stated that payment shall be made at the Office of the Housing-FHA Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 7th Street, S.W., Washington, D.C. 20410 (Sec'y Stat. ¶ 3, Exh. A-1).

The Note also cited specific events that would make the debt become due and payable. One of these circumstances was when Petitioner paid in full all amounts due under the primary note and related mortgage insured by the Secretary. On or about October 1, 2010, the FHA Insurance on the first mortgage was terminated, when the lender indicated the mortgage was paid in full. (Sec'y Stat. ¶4), Exhs. F-1, and B-1 ¶4). Pursuant to the terms and conditions of the Note, payment became due in full. HUD has attempted to collect the amount due under the Note, but Petitioner remains delinquent. (Sec'y Stat. ¶5; Exh.B-2, ¶5).

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated July 18, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 6; Exh. C). In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms (Sec'y Stat. ¶ 6, Exh. B-2, ¶7). Petitioner did not enter into a written repayment agreement based on the July 18, 2011 Notice. (Sec'y Stat. (Sec'y Stat. ¶ 6, Exh. B-2, ¶8).

A Wage Garnishment Order was sent to Petitioner's employer on August 18, 2011. As of September 6, 2011, no payments have been received based on the garnishment order. (Sec'y Stat. ¶ 7, Exh. B-2, ¶9).

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

- (a) \$11,020.80 as the unpaid principal balance as of August 31, 2011;
- (b) \$73.44 as the unpaid interest on the principal balance at 1% per annum through August 31, 2011; and
- (c) interest on said principal from September 1, 2011, at 1% per annum until paid.

(Sec'y Stat., ¶ 8; Exh. B-2, ¶5(a)-(c).

Petitioner submitted an appeal and request for hearing on August 22, 2011. The Petitioner disputes liability for this debt by stating "I have been in contact with my attorney and we feel that the debt belongs to the property closing attorney and his title insurance company. It should have been fund (sic) during the title search that he was paid to do with closing fees." Petitioner's Request for Hearing, dated August 16, 2011.

In support of his position, Petitioner filed a letter dated July 29, 2011, from William D. Leach, the attorney responsible for conducting the sale of Petitioner's home. In that letter, Mr. Leach stated "[a]t the closing, a payoff in the amount of \$11,020.89 should have been shown on the Settlement Statement as an amount to be withheld from your proceeds and mailed to HUD as

payoff on your second mortgage. This oversight was an honest mistake by our office due to several factors . . . [W]e did not collect the second mortgage payoff on the Settlement Statement” (Exh. D-1, ¶2. Mr. Leach further stated “[w]hat I do know is that while my office should have collected the payoff and sent it in to HUD, the two of you, as co-signers on that Promissory Note, are ultimately and legally responsible for the debt. By your signature on the Settlement Statement, you certified to my office and to the government that the Settlement Statement was accurate in regard to the debts owed against the property.” (Sec’y Stat. ¶10; Exh. D-2, ¶4.

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause a financial hardship. Petitioner disputes the terms of the proposed garnishment. (Petitioner’s Request for a Hearing (“Pet’r Hr’g Req.”), filed August 22, 2011.)

For Petitioner not to be held liable for the full amount of this debt, there must be a release in writing from the Secretary, specifically discharging Petitioner’s obligation or valuable consideration accepted by the Secretary from Petitioner, which would indicate an intent to release, (Sec’y Stat. ¶11). *Terri (Padgett) Luck*, HUDOA No. 08-M-CH-JJ36, November 25, 2008); See also *Beckie Thompson*, HUDBCA No. 04-D-CH-EE015 (September 20, 2004); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917, (December 22, 1986); *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255, (February 28, 1986). The sale of the property “does not automatically discharge Petitioner’s responsibility for the loan. (Sec’y Stat. ¶11). Therefore, Petitioner remains responsible for paying the debt. *Joseph Garrett*, HUDDOA 08-M-CH-JJ18, (July 24, 2008); See also, *Michael H. Weed*, HUDDOA No. 07-M-NY-HH52, (November 19, 2007).

The Secretary has met his burden of proof to come forward with documentary evidence in support of his claim against Petitioner for the debt owed to HUD. Petitioner, on the other hand, has failed to file evidence of a release from the Subordinate Mortgage, and therefore remains legally obligated for repayment of the Subordinate Note. Petitioner was provided with more than ample time to file his evidence. See, Order dated November 23, 2011, ordering Petitioner to file documentary evidence on or before December 20, 2011, as initially sought in the Notice of Docketing. This Order stated that “[f]ailure to comply with this Order may result in a decision based on the documents in the record of this proceeding.” (emphasis in original). (*Id.*)

Petitioner filed with the Court on December 16, 2011, a request for extension of time “to resolve this matter without a garnishment procedure, I am not disputing the moneys but I am trying to find out why this was not paid from the title search insurance during the closing of the sale on this property. I am also working on a way to pay the full amount.” The Court granted Petitioner’s request for extension of time on January 4, 2012, was Petitioner was ordered to file his documentary evidence on or before February 3, 2012. The Order required Petitioner to file specific documentary evidence, such as pay statements, proof of actual payment for household expenses, e.g., receipts, bank statements, and copies of checks, money orders, for payment of

mortgage payments, rent, food, transportation, necessary medical expenses, and other basic household necessities.

On February 2, 2012, Petitioner filed with this Court a request for a second extension of time. In that request, Petitioner stated: "I realize that it is my debt and I do not wish to dispute it . . ." Petitioner further stated in his letter "what I am trying to do is Refinance another house that I own and borrow the money that I owe HUD . . . I got behind 30 days on the Mortgage and the Mortgage company will not refinance until it has been a full 12 months that the mortgage is current. And that date will be at the end of March, 2012." The Court issued an Order on February 16, 2012, granting Petitioner a final extension of time until March 30, 2012 to file his documentary evidence. As of the date of this Decision and Order, no additional documentary evidence was received from Petitioner. Therefore, a finding against Petitioner is justified on the basis of his noncompliance with the Orders issued by this Office. 31 C.F.R. § 285.11(f)(11).

Accordingly, I find that the Secretary has provided sufficient proof and that the debt in this case is past due and enforceable in the amount alleged by the Secretary.

ORDER

For the reasons stated above, it is

ORDERED that the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment, entered on August 24, 2011, is **VACATED**. It is

FURTHER 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

May 2, 2012