

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

**Mahmood Hosseinzadeh,**

Petitioner.

HUDOA No. 12-M-CH-AWG18  
Claim No. 78-0155534-0A

March 29, 2012

**DECISION AND ORDER**

On November 21, 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”). 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 November 23, 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 November 23, 2011.)

**Background**

Petitioner executed and delivered a Note dated October 14, 1997, to Bayside First Mortgage Company, in the amount of \$25,000.00, for a loan that was later assigned to Home

Owners Mortgage & Equity, Inc. DBA Home, Inc., then to Federal National Mortgage Association (Fannie Mae), and then finally to Green Tree Financial Corporation. (Secretary's Statement ("Sec'y. Stat."), filed December 12, 2011, Ex. 1; Ex. 2 ¶ 3.) The Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 USC 1703. (Sec'y Stat. ¶ 3.) After default by Petitioner, the Note was assigned to HUD by Conseco Finance Consumer Discount Company f/k/a Green Tree Consumer Discount Company, under the regulations governing the Title I Insurance Program. (Sec'y Stat., ¶ 2; Sec'y Stat. Ex. 2 ("Dillon Decl."), dated December 9, 2011, ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. After 34 garnishments totaling \$13,381.72, Petitioner remains indebted to HUD on the Note in the following amounts:

- (a) \$24,812.77 as the unpaid principal balance as of November 30, 2011;
- (b) \$1,302.70 as the unpaid interest on the principal balance at 5.0% per annum through November 30, 2011;
- (c) interest on said principal balance from December 1, 2011 at 5.0% per annum until paid.

(Sec'y. Stat., ¶ 9; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated February 12, 2010, was sent to Petitioner. (Sec'y. Stat., ¶ 6; 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 with HUD. (Sec'y. Stat., ¶ 6; Dillon Decl., ¶ 6.) As of December 9, 2011, Petitioner has not entered into a written repayment agreement in response to the February 12, 2010 Notice. (*Id.*) A Wage Garnishment Order was issued to Petitioner's employer on March 18, 2010. (Sec'y Stat. ¶ 7; Dillon Decl. ¶ 7). HUD has received 34 garnishment payments totaling \$13,381.72 prior to the imposition of the Stay of Referral. (Sec'y Stat. ¶ 8, Ex. 2, Dillon Decl. ¶ 8.)

Based on a review of Petitioner's bi-weekly pay statement, the Secretary, after accounting for allowable deductions, proposes the continuation of the bi-weekly repayment schedule of 15% of Petitioner's disposable pay, or \$464.37. (Sec'y Stat. ¶ 11; Dillon Decl., ¶ 8.)

### **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 the ground that an administrative wage garnishment would result in financial hardship to Petitioner. (Petitioner's Hearing Request ("Hr'g Req."), filed November 8, 2011.)

Petitioner objects to the administrative wage garnishment by stating that "[d]ue to the continuing economic conditions impacting me and my family I am unable to pay the monthly

installment for the claim no. 78015534-0A.” (Hr’g Req.) Specifically, Petitioner states that, “I am on negative living (sic) on a daily basis,” and that “my family responsibilities increase tremendously as my two step children came to USA and will be my responsibility.” (Hr’g Req.; Hr’g Req. attach. 1-2.) Petitioner also requests that his “charges” be waived. (Hr’g Req.). In support of his claims, Petitioner included five attachments with his Hearing Request. (*Id.*) The attachments include a HUD Debt Resolution Program Financial Statement, photocopies of United States visas, now expired, allegedly belonging to his step-children, federal income tax returns for 2010, and two bi-monthly pay stubs representing Petitioner’s earned wages between September 16, 2011 and October 15, 2011. (Hr’g Req. attach. 1-5.)

This Office ordered Petitioner to provide further evidence to support his claim of financial hardship on November 23, 2011, and again on January 17, 2012. (Notice of Docketing, Order, and Stay of Referral, dated November 23, 2011; Order to Petitioner, dated January 17, 2012.) The Notice of Docketing, dated November 23, 2011, stated with particularity the types of evidence the Court required the Petitioner to file. (Notice of Docketing, Order, and Stay of Referral, dated November 23, 2011.) This Office stated that Petitioner’s documentary evidence “shall include: cancelled checks, receipts, or bills showing a record of payment, or other documentary proof of payments.” (*Id.*) Still, Petitioner failed on two consecutive occasions to provide this Office with further evidence to support his claims. (*See* Order to Petitioner, dated January 17, 2012).

This Office does not have the authority to “waive” Petitioner’s debt. 31 C.F.R. § 285.11(k)(3) provides only that, if the Court finds financial hardship, “the agency shall downwardly adjust ... the amount garnished.” This Office only has authority to reduce the monthly amount that Petitioner pays through garnishment. And although Petitioner alleges financial hardship, he provides no documentary evidence of monthly expenditures to support his claim. Although this Office has the authority to limit certain documentation requirements for essential expenses, such as food or rent, it only does so when Petitioner provides credible evidence of other debts. Petitioner has provided no evidence of the monthly payments he alleges in his Financial Statement, despite two court orders to do so. (*See* Order to Petitioner, dated January 17, 2012; Hr’g Req., attach. 1.) Because he has not provided sufficient evidence to support his claim, Petitioner has failed to meet his burden of establishing, by a preponderance of the evidence, that the Secretary’s proposed repayment schedule creates a financial hardship. Therefore, the Court finds that Petitioner is legally obligated to pay the debt that is the subject of this proceeding.

### **ORDER**

For the reasons set forth above, the Court finds the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**. It is hereby

**ORDERED** that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative wage garnishment in the amount of 15% of Petitioner's disposable income.



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H. Alexander Manuel  
Administrative Judge