



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

In the Matter of:

**Gary Cannady,**

Petitioner

HUDOA No. 08-M-CH-AWG26  
Claim No. 770470331

Gary Cannady  
P.O. Box 375  
Granite, OK 73547

Pro se

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For the Secretary

**DECISION, RULING, AND ORDER**

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 a mechanism for the collection of debts owed to the United States Government.

The administrative judges of this Court 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, 2008, this Court 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 (“Notice of Docketing”), dated March 24, 2008.)

### **Background**

On May 30, 1989, Petitioner executed and delivered to Green Tree Acceptance, Inc. (“Greentree”) a Manufactured Home Retail Installment Contract and Security Agreement (“Note”) in the amount of \$39,141.50 for a manufactured home loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (“Sec’y Stat.”), filed April 24, 2008, ¶ 2, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), ¶ 3) After default by Petitioner, Greentree assigned the Note to HUD. (Sec’y Stat., ¶ 3, Ex. B, Dillon Decl., ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. (Sec’y Stat., ¶ 4, Dillon Decl., ¶ 4.) Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$17,125.48 as the unpaid principal balance as of February 28, 2008;
- (b) \$19,072.24 as the unpaid interest on the principal balance at 8.0% per annum through February 28, 2008; and
- (c) interest on said principal balance from March 1, 2008, at 8.0% per annum until paid.

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

A Notice of Sale was sent to Petitioner dated December 21, 1990. (Dillon Decl., ¶ 5.) Prior to default on August 31, 1990, Petitioner made 13 payments totaling \$5,961.41. (*Id.* at ¶ 6.) On April 2, 1990, Petitioner was sent by certified mail a Notice of Default and Right to Cure. (Sec’y Stat., ¶ 7(B).) Upon default, the mobile home was repossessed and sold. Dillon Decl., ¶ 8.) Petitioner’s account was credited with the net sales price of \$25,682.46. (*Id.*)

On January 28, 2008, a Notice of Intent to Initiate Administrative Wage Garnishment proceedings was sent to Petitioner. (Sec’y Stat., ¶ 6, Dillon Decl., ¶ 9.) Petitioner submitted a copy of his monthly pay statement ending February 29, 2008. (Sec’y Stat., ¶ 7, Ex. E, Dillon Decl., ¶ 12, Ex. G.)<sup>1</sup> The pay statement indicates that Petitioner’s gross pay for the pay period totaled \$4,754.91. (*Id.*) After subtracting allowable deductions of \$1,334.34, Petitioner is left

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<sup>1</sup> Exhibit G refers to the Notice of Default and Right to Cure Default and does not list any income information for Petitioner.

with a monthly net disposable income of \$3,420.57. (*Id.*) However, these figures stand in contrast to the ones referred to in the Secretary's Statement. The Secretary's Statement refers to Petitioner's Financial Statement, which lists Petitioner's gross income as \$3,322.10 per month. (Sec'y Stat., Ex. E.) The allowable deductions total \$918.34, leaving Petitioner with a net disposable income of \$2,403.76. (*Id.*)

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. (Dillon Decl., ¶ 10.) As of March 28, 2008, Petitioner has not entered into a written agreement in response to the January 28, 2008 Notice. (*Id.*) On February 28, 2008, a Wage Garnishment Order was issued by HUD. (Dillon Decl., ¶ 11.)

### **Discussion**

Petitioner asserts that the debt that is the subject of this proceeding may not be collected by administrative wage garnishment because: (1) Petitioner did not receive proper notice of HUD's intent to initiate wage garnishment; (2) HUD failed to pursue its claim against Petitioner in a timely manner; (3) the unpaid principal balance claimed by the Secretary is incorrect; (4) HUD should afford Petitioner the opportunity to settle on the same terms as his ex-wife; and (5) wage garnishment would cause Petitioner financial hardship. (Petitioner's Hearing Request, filed March 24, 2008.)

First, Petitioner asserts that he did not receive proper notice of the Department's intent to collect the alleged debt by means of administrative wage garnishment, stating: "I never received notification. After speaking with Mr. Koepfel, the AWG Coordinator, he stated they had sent a letter but it came back to them because it had a physical address instead of a P.O. Box #. We only get mail at P.O. Boxes." (*Id.*)

Pursuant to 31 C.F.R. § 285.11(e)(1), a federal agency seeking administrative wage garnishment "shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of" the nature and amount of the alleged debt, the agency's intent to collect the same by means of administrative wage garnishment, and an explanation of the alleged debtor's rights "at least 30 days before the initiation of garnishment proceedings."

On March 24, 2008, this Court ordered the Secretary to file "documentary evidence of legally sufficient notice(s) to Petitioner regarding any default on the promissory note or contract, or regarding any sale of collateral." (Order, dated March 24, 2008.) In response, the Secretary filed a statement supported by documentary evidence, which included a Notice of Default and Right to Cure Default and a receipt for certified mail signed by Petitioner. (Sec'y Stat., ¶ 7(B), Ex. G and Ex. H.) On April 2, 1990, a Notice of Default and Right to Cure letter was sent to Petitioner at Route 1, Box 217, Granite, OK 73547 (the address provided in the Note), detailing his delinquent payments and a remedy for this delinquency. (Sec'y Stat., ¶ 7(B), Ex. G.) A postal receipt for certified mail was obtained and signed by Petitioner. (Sec'y Stat., ¶ 7(B), Ex. H.)

On September 2, 2008, this Court ordered Petitioner to file documentary evidence showing Petitioner's course of residency and all mailing addresses used from April 2, 1990, the date of the Notice of Default received by Petitioner, to January 28, 2008, the date of the Notice of Intent. (Order, dated September 2, 2008.) In response, Petitioner submitted credit card statements from June 2007 through December 2007 and a medical bill. (Petitioner's Letter, filed October 8, 2008, attaches.) These documents list Petitioner's name and address as Gary Cannady, P.O. Box 375, Granite, OK 73547. (*Id.*) In addition, Petitioner submitted a notarized document listing all of Petitioner's mailing addresses for the relevant time period. According to the document, Petitioner's mailing address was Route 1, Box 217, Granite, OK 73547 from April 1990 until June 1990. (*Id.*) Petitioner's current mailing address since June 1991 is P.O. Box 375, Granite, OK 73547. (*Id.*)

On March 17, 2009, this Court ordered Petitioner to file documentary evidence on or before March 25, 2009 that he notified HUD of a change in his mailing address. (Order, filed March 17, 2009.) The Order stated that failure to comply with the Order shall result in a decision based upon the documents in the record. (*Id.*) Petitioner did not respond to the Order by the stated deadline. This Court finds that proper notice was given to Petitioner because Petitioner produced no evidence to prove that he notified the Department of any address change and the Department met the notice requirements of 31 C.F.R. § 285.11(e) by mailing the Notice of Intent to Petitioner's last known address.

Second, Petitioner argues that HUD did not pursue its claim against him in a timely manner, stating: "This debt is 19 years old." (Petitioner's Hearing Request, filed March 24, 2008.)

A delay in pursuing HUD's claim, even a very long delay, does not prevent the Secretary from enforcing the terms of the Note. *David Olojo*, HUDOA No. 07-0-CH-AWG19, (October 4, 2007) ("It is well-established, however, that the United States is not generally subject to the defense of laches.") (*citing Glen Byrd*, HUDBCA No. 91-G-6679-N373 (December 12, 1991), *United States v. Summerlin*, 310 U.S. 414, 416 (1940)). Furthermore, the controlling statute in the instant case, 31 U.S.C. § 3720D, does not contain a time limitation in which the government is required to bring such administrative actions. No statute of limitations bars agency enforcement action by means of administrative wage garnishment. *See BP America Prod. Co. v. Burton*, 127 S. Ct. 638 (2006). Therefore, this Court finds that the Secretary is not barred from initiating wage garnishment proceedings to recover the outstanding balance.

Third, Petitioner alleges that the unpaid principal balance of \$17,125.48 as claimed by the Secretary is incorrect. (Sec'y Stat. ¶ 5, Dillon Decl. ¶ 4.) Petitioner states: "The Ex-Wife [sic] paid something on this note but I do not know how much." (Sec'y Stat., Ex. E.) On May 20, 2008, this Court ordered Petitioner to file documentary evidence proving that all or part of the alleged debt is either unenforceable or not past due. (Order, dated May 20, 2008.) Because Petitioner has not filed any such documentary evidence supporting his allegations, this Court finds that the unpaid principal balance claimed by the Secretary is correct.

Fourth, Petitioner argues that his ex-wife, a co-signer of the Note, was unjustly allowed to settle her responsibility for the debt, and that Petitioner should be allowed to settle for the same amount. Petitioner states:

Linda Allen was given an opportunity to make payments of \$4,000.00 + interest when she was responsible for 1/2 of this debt. But now 17 years later your [sic] saying I owe \$36,000 Dollars [sic] how does that work? ...It doesn't look like I was offered the same opportunity as Ms. Allen. I would have gladly paid 4,000 dollars + interest to take care of this matter.

(Petitioner's Response, dated December 9, 2008, attachs.)

The Secretary, as creditor, may demand full payment of this debt from Petitioner or his ex-wife, or may elect to settle with one co-signer for less than the full amount. "It is well-established law that where several parties are co-signers of a promissory note, the creditor may proceed against any co-signer for repayment of the full amount of the debt." *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052, p. 7 (June 15, 2005). *See, e.g., Ennis v. McLaggan*, 608 S.W.2d 557 (Mo.App. S.D. 1980) (holding that no consideration is required "other than the amount the creditor is willing to accept for him to discharge the debtor from liability for a greater sum."). Furthermore, the Secretary is not bound to offer a settlement to Petitioner for the same amount. 31 C.F.R. § 902.4(b) ("The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim."). In addition, this Court is not authorized to review the sufficiency of the consideration of the settlement between the Department and Petitioner's ex-wife, nor is this Court authorized to impose an identical settlement.

Petitioner may wish to negotiate his own repayment terms with the Secretary. This Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may also wish to discuss his interest in settling this case, or any claim of financial hardship that he may wish to make, with Counsel for the Secretary who represents HUD in this matter, or to submit a Title I Financial Statement (HUD Form 56142) to Lester J. West, Director, U.S. Department of Housing and Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY 12203, who may be reached at 1-800-669-5152.

Finally, Petitioner asserts that garnishment of his wages will cause him financial hardship. Petitioner states: "I am almost 60 years old [sic] I had a heart attack in Sept. I do not know how long I can work. I will be looking into bankruptcy because of this." (Petitioner's Hearing Request, filed March 24, 2008.)

Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship for him. 31 C.F.R. § 285.11(f)(8)(ii). On May 20, 2008, this Court ordered Petitioner to "file documentary evidence which will prove that payment of \$513.09 per month, as set forth in the Secretary's proposed repayment schedule, would cause financial hardship to Petitioner." (Order, dated May 20, 2008.) Such evidence shall include copies of Petitioner's bills and payments, medical expenses, and other documentary proof of monthly household

expenses incurred within the past 90 days, including receipts for payment of Petitioner's prescribed medical bills. (*Id.*)

In support of his argument, Petitioner did provide some evidence of financial hardship, including credit card statements, a HUD Financial Statement Form, a copy of Petitioner's pay statement, and copies of monthly bills and expenses in support of his claim. (Petitioner's Documents, filed June 16, 2008.) Although these credit card statements do indeed show outstanding balances, Petitioner has not provided documentary evidence identifying the items or services purchased by such credit cards. Therefore, this Court ordered Petitioner to file documentary evidence within 20 days of the Order showing the purchases charged to Petitioner's credit card(s). (Order, dated July 3, 2008.)

As further evidence of financial hardship, Petitioner alleges that he has been unable to work since August 2007. Petitioner states: "Injured on job since August 8, 2007 [sic] Not working [sic]." (Petitioner's Hearing Request, filed March 24, 2008.) Pursuant to 31 C.F.R. § 285.11(j), the Secretary "may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months." On November 7, 2008 this Court ordered Petitioner to submit documentary evidence to establish the precise dates during which he was employed from September 2007 through November 2008, together with documentary evidence proving Petitioner was involuntarily separated during any periods of employment claimed by Petitioner. (Order, filed November 7, 2008.) In addition, Petitioner was notified that failure to comply with the Order would result in a decision based upon the documents currently in the record. (*Id.*)

In response, Petitioner sent a letter correcting one of his answers from the Financial Statement. (Petitioner's Letter, filed November 24, 2008, attaches.) Petitioner states that it was his wife, and not Petitioner, that was injured on the job on August 8, 2008 and as a result, was unable to work. (*Id.*) Also, Petitioner added that he was attacked by a bobcat and that the resulting medical bills would soon arrive. (*Id.*)

Following Petitioner's November 24, 2008 letter, the Secretary moved to dismiss the appeal and lift the Stay of Referral on the grounds that Petitioner "failed to follow the directions set forth within the text of the Order and supply documentary evidence." (Secretary's Motion to Dismiss, filed December 2, 2008.) This Court ordered that the Secretary's Motion to Dismiss shall be taken under advisement. (Ruling and Order, filed December 5, 2008.) This Court also reminded Petitioner that on November 7, 2008, this Court ordered Petitioner to submit documentary evidence to "establish the precise dates during which he was employed..." (*Id.*)

Subsequently, Petitioner submitted a handwritten letter, along with details of the bobcat attack. (Petitioner's Response, dated December 9, 2008, attaches.) Petitioner submitted a letter from the Oklahoma State Reformatory, his employer, stating that Petitioner was a full time employee from August 8, 2007 through February 29, 2008. (*Id.*) In Petitioner's Financial Statement, dated March 19, 2008, Petitioner stated that he was currently employed at the Oklahoma State Reformatory as a Correctional Officer. (Sec'y Stat., Ex. E.) Petitioner later submitted pay statements from May 2008 through October 2008. (Petitioner's Response, dated January 7, 2009, attaches.) Based on Petitioner's Financial Statement and 2008 pay statements,

this Court finds that Petitioner is still employed as a Corrections Officer with the Oklahoma State Reformatory.

On December 10, 2008, this Court issued a Ruling and Order once again ordering Petitioner to file any and all evidence that the proposed repayment schedule would create a financial hardship for Petitioner. (Ruling and Order, filed December 10, 2008.) The Order stated that Petitioner must file proof of payment in order to prove financial hardship and that failure to comply with the Order shall result in a decision based on the documents currently in the record. (*Id.*) The Order also reiterated that numerous time extensions had already been given to Petitioner and that no further time extensions would be granted absent a showing of exigent circumstances. (*Id.*)

In response, Petitioner submitted a handwritten letter, along with numerous pages of bank statements, credit card statements, pay statements, and bills. (Petitioner's Response, dated January 7, 2009, attaches.) Many of these documents are illegible and cannot be considered by this Court. Among the legible documents submitted by Petitioner are bills for the following: motor vehicle tax, \$93.50; car insurance, \$1,359.00; 2008 property tax, \$195.24; and medical expenses for both Petitioner and Petitioner's spouse, \$2,259.60. (Petitioner's Response, dated January 7, 2009, attaches.) These items total \$3,907.34 or \$325.61 per month. (*Id.*) Petitioner will be given credit for these items as they are essential household expenses. Petitioner listed additional monthly expenses for other various items in his Financial Statement. (Sec'y Stat., Ex. E.) These expenses include: rent, \$559.13; food, \$400; electricity, \$87.23; other utilities, \$81.21; gas, \$294.00; cell phones, \$93.97; television, \$79.96; car payment #1, \$459.24; and car payment #2, \$523.94. (*Id.*) However, Petitioner will only be given credit for essential household expenses. As such, Petitioner's evidence of television and cellular phone service expenses were not credited. In addition, this Court will give only partial credit for Petitioner's food, car payment and gas expenses, because although such expenses are generally deemed to be essential household expenses, the expenses submitted by Petitioner are excessive. Consequently, Petitioner will be given credit for \$250 for food, \$200 for gas, and \$523.94 for car payment expenses. Therefore, Petitioner's essential household expenses total \$2,027.12 monthly.

Petitioner's January 7, 2008 letter included monthly pay statements from 2008. (Petitioner's Response, dated January 7, 2009, attaches.) Based on these statements, Petitioner's average monthly gross pay is \$5,896.14. After subtracting 30% of this amount for allowable deductions, Petitioner's net monthly pay comes to \$4,127.30.

Petitioner's disposable pay of \$4,127.30 minus his essential household expenses of \$2,027.12 leaves him with a balance of \$2,100.18 monthly. A garnishment rate of 15% of Petitioner's disposable pay, as proposed by the Secretary, or \$619.10, would not exceed Petitioner's monthly balance of \$2,100.18, and therefore, would still enable Petitioner to meet his essential household expenses.

**ORDER**

For the reasons set forth above, the Secretary's Motion to Dismiss is **DENIED**. 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 15% of Petitioner's monthly disposable pay.

/s/ original signed

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H. Alexander Manuel  
Administrative Judge

June 12, 2009