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In the Matter of:	:	
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<b>ERIC CICALESE,</b>	:	HUDBCA No. 03-A-CH-AWG01
	:	FHA No. 980089236
	:	
Petitioner	:	
:	:	

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Eric Cicalese	For the Petitioner
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Oceanside, CA 92054	

Michael Berke, Esq.	For the Secretary
US Department of Housing and	
Urban Development	
Office of Assistant General Counsel	
For Midwest Field Offices	
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Chicago, IL 60606-3507	

**DECISION ON ADMINISTRATIVE WAGE GARNISHMENT**

**Background**

Petitioner has 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"). This alleged debt has resulted from a defaulted loan which was insured against non-payment by the Secretary of HUD. This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations. The administrative judges of this Board have been designated to determine whether this debt is past-due and enforceable against Petitioner and, if so, whether the Secretary may collect the alleged debt by administrative wage garnishment. 24 C.F.R. § 17.170(b). Pursuant to 31 C.F.R. § 285.11(f)(10)(i), issuance of a wage withholding order was stayed until the issuance of this written decision.

The hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170, and is limited to a review of the written record, unless otherwise ordered. 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 present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 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. 31 C.F.R. § 285.11(f)(8)(ii).

### **Summary of Facts and Discussion**

31 U.S.C. § 3720D provides Federal agencies with a remedy for the collection of debts owned to the United States Government. The review of the record of this proceeding is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170.

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims that: (1) the Secretary did not make efforts to collect the debt other than by wage garnishment; (2) administrative wage garnishment is an "excessive and unnecessary" means to collect this debt; (3) the amounts claimed in the Secretary's Statement are excessive; (4) Petitioner should be released from liability by the Secretary in this action as a result of a prior foreclosure proceeding; and (5) this matter should be heard at a later time to allow Petitioner to submit a more thorough response.

On September 27, 1993, Petitioner executed and delivered to Interstate Plus Mortgage, Inc. a note for home improvements in the amount of \$15,00.00. (Secretary's Statement, hereinafter "Secy. Stat.", Exh. A). Petitioner defaulted on the note, and the property was foreclosed on by Foreclosure Deed filed June 9, 1996. (Secy. Stat., Exh. B at ¶ 6). After default, First Bank National Association assigned the note to the United States of America pursuant to 24 C.F.R. § 201.54. Id. At ¶ 3.

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in a specific amount. However, Petitioner, not with standing his belief "that all indebtedness had been

discharged through a previous foreclosure," has submitted no documentary evidence to substantiate any of his assertions. (Pet. Declaration, para.3, Nov. 20, 2002). Assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable. Tammie and Donald Purcell (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

Petitioner asserts that he is "willing to cooperate with the Department of the Treasury and to resolve this matter without the necessity of wage garnishment..." and that he is now "prepared to make whatever payment arrangement may be required and to settle the matter expeditiously." (Pet. Declaration, paras. 5 and 6, dated Nov. 20, 2002). However, this Board is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Consequently, Petitioner may wish to convey his offer to settle this matter to Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206. Petitioner may also request a review of his financial status by submitting to that HUD office a Title I Financial Statement (HUD Form 56142).

In any event, Petitioner has provided no legal or factual basis on which this Board can grant the relief requested by Petitioner.

#### **ORDER**

In the absence of any evidence submitted by Petition to disprove the documentary evidence submitted by the Secretary, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. The Order imposing the 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 seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.

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David T. Anderson  
Administrative Judge

Date: January 3, 2003