
In the Matter of:

Dale M. Hamon,

Petitioner

HUDBCA No. 03-A-CH-AWG25
Claim No. 77-092622-5

Dale M. Hamon
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Pro se

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For the Secretary

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 authorizes Federal agencies to utilize administrative wage garnishment as a remedy for the collection of debts owed 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.

On April 27, 1994 Petitioner executed and delivered to Seacoast Equities, Inc. an installment note in the amount of \$15,000.00 for a home improvement loan that was insured against nonpayment by the Secretary pursuant to the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement, hereinafter "Secy. Stat.", Exhibit A). Thereafter, the Seacoast Equities, Inc., assigned the note to Empire Funding Corp., Servicing Agent for TMI Acceptance Corp. (Secy. Stat., Exh. C). Petitioner subsequently defaulted on the note. Consequently, Empire Funding Corp., Servicing Agent for TMI Acceptance Corp. assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54. The Secretary is the holder of the Note on behalf of the United States. (Secy. Stat., at 3). Petitioner is indebted to the Secretary in the following amounts: \$13,842.53 as the unpaid principal balance as of May 30, 2003; \$2,489.62 as the unpaid interest on the principal balance at 5% per annum through May 30, 2003; \$489.96 as the U.S. Department of Treasury Debt Management Service fee; \$4,083.03 as the private collection agency (PCA) fee; and interest on said principal balance from June 1, 2003, at 5% per annum until paid. (Secy. Stat., Exh. B).

Petitioner does not dispute the existence of the debt, but disputes the terms of the proposed repayment schedule and asserts that administrative wage garnishment would cause financial hardship. (Petitioner's Hearing Request form dated May 8, 2003). The Petitioner claims that he "cannot afford to make payments in the amount of \$1000.00 per month." (Petitioner's Hearing Request form Dated May 8, 2003). As further evidence of his inability to meet the Secretary's proposed repayment schedule, the Petitioner asserts that he claims nine exemptions on his W-4 IRS form. (Secy, Stat., Exh. B, attachment identified as Exh. A)

According to the Declaration of Lester J. West:

On June 18, 2003, Petitioner faxed HUD a pay stub for pay period ending May 31, 2003 (Exhibit A). According to the pay stub, gross earnings for the pay period ending May 31, 2003 total \$1,429.57. Allowable deductions totaling \$396.84 are as follows: OASDI CON (Mandatory retirement) \$88.64, WORK COMP

\$21.14, MEDCAR CON (Medicare) \$20.72, KAISER (Health Insurance) \$259.21, and SAFE VISN \$7.13. Petitioner's net disposable pay equals \$1,032.73. 15% of the Petitioner's disposable income of \$1,032.73 is \$154.91. If Administrative Wage Garnishment is authorized, a garnishment at 15% would result in a repayment schedule under such a garnishment order equal to \$154.90 per pay period. (Secy. Stat., Exh. B).

The amount that the Secretary seeks to recover by administrative wage garnishment is well below the "\$1,000 per month" which Petitioner avers he cannot afford. In any event, 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. Petitioner, however, has failed to submit persuasive, credible documentary evidence to substantiate his claim that the administrative wage garnishment of his disposable pay in the amount sought by the Secretary would cause financial hardship.

While Petitioner may wish to negotiate repayment terms with the Department, this Board is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may wish to discuss this matter with 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).

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.

David T. Anderson
Administrative Judge

Date: August 7, 2003

