
In the Matter of:

Damon McMillion,

Petitioner

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: HUDBCA No. 03-A-CH-AWG14
: Claim No. 7-80133077
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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 a 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 September 18, 1996, Petitioner executed and delivered to Empire Funding Corp., an installment note in the amount of \$10,580.00 for a home improvement 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, hereinafter "Secy. Stat." unmarked Exh.). Thereafter, Empire Funding Corp. assigned the note to Amerus Bank. Petitioner subsequently defaulted on the note. Consequently, Amerus Bank 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: \$8,522.63 as the unpaid principal balance as of February 28, 2003; \$355.10 as the unpaid interest on the principal balance at 5% per annum through February 28, 2003; \$266.33 as the Department of Treasury (DMS) fee; \$2,219.43 as the private collection agency (PCA) fee; and interest on said principal balance from February 28, 2003, at 5 % per annum until paid. (Secy. Stat., Declaration of Lester J. West dated March 19, 2003).

Petitioner does not dispute the existence of the debt. Rather, Petitioner contends that he does not owe the full amount of the debt because of "previous payments and unsatisfactory labor and materials." (DCS Hearing Request Form dated March 4, 2003). Petitioner, however, has submitted no evidence to rebut the Secretary's Statement and supportive documentation that the debt exists and is enforceable against him despite the Board's Orders dated March 7, 2003 and April 30, 2003 to do so.

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)). Inasmuch as Petitioner has failed to provide documentary evidence to substantiate his position and has failed to comply with two orders of this Board to do so, Petitioner's claims that he is not indebted to HUD in the amounts alleged must fail for lack of proof. Elizabeth Aragon, HUDBCA No. 97-C-SE-W231, (October 28, 1997) citing Nona Mae Hines, HUDBCA No. 87-1907-G240 (February 4, 1987).

ORDER

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

June 23, 2003