

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

In the Matter of:

Todd and Erin Finholdt,

Petitioners.

19-AM-0138-AG-034

721013065

July 12, 2022

DECISION AND ORDER

On May 23, 2019, Erin A. Finholdt, (“Petitioner”) contacted the Office of Hearings and Appeals concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishments as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the administrative judges of the Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

BACKGROUND

On or about March 8, 2013, Petitioners sought financial assistance from HUD to help them avoid possible foreclosure of their mortgage with their primary lender. HUD loaned Petitioners the sum of \$10,731.17 to help them avoid defaulting on their mortgage. (*See Secretary's Statement*, (“*Sec’y Stat.*”), ¶ 3; Exh. 1, Declaration of Brian Dillon, Director of Asset Recovery Division, HUD Financial Operations Center, (“*Dillon Decl.*”) ¶ 4). Petitioners executed and duly delivered a Subordinate Note (“*Note*”), evidencing this loan to HUD. (*See Sec’y Stat.*, ¶ 2; Exh. 2, Note, dated March 8, 2013). Under the terms of the Note, Petitioners were to pay the principal amount of the unpaid balance on the Note until it was paid in full. (*See Sec’y Stat.*, ¶ 4; Exh. 2, Note, ¶¶ 2-4). The Note cited specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable – one of which was when Petitioners’ underlying mortgage to their primary lender was paid in full. (*See Sec’y Stat.*, ¶ 4; Exh 1, Dillon Decl., ¶ 4; Exh. 2, Note, ¶ 4(A)(i)).

On or about November 3, 2017, Petitioners’ FHA mortgage insurance was terminated, as Petitioners’ primary lender indicated that the primary mortgage had been paid in full. (*See Sec’y Stat.*, ¶ 5; Exh. 1, Dillon Decl., ¶ 4). This automatically triggered the provisions of ¶ 4(A)(i) of

the Note, requiring Petitioners to pay the full amount owed under the Note to HUD. (*See* Exh. 2, Note, ¶ 4(A)(i)). Thereafter, HUD attempted to collect the amounts owed by Petitioners, but Petitioners failed to pay. (*See Sec'y Stat.*, ¶ 6; Exh. 1, Dillon Decl., ¶ 5). As a result, the Secretary alleges that Petitioners are indebted to HUD in the following amounts:

- a) \$8,909.82 as the unpaid principal balance as of July 30, 2019;
- b) \$7.42 as the unpaid interest on the principal balance at 1% per annum through July 30, 2019;
- c) \$744.15 as the unpaid penalties and administrative costs through July 30, 2019; and
- d) interest on said principal balance from July 31, 2019 at 1% per annum until paid.

(*Sec'y Stat.*, ¶ 7; Exh. 1, Dillon Decl., ¶ 5).

According to the Secretary's calculations, the above balances take into account the first four of six garnishments withheld from Petitioner Todd Finholdt's pay, pursuant to the Wage Garnishment Order, totaling \$1,752.53 (*See Sec'y Stat.*, ¶ 11; Exh. 1, Dillon Decl., ¶ 10). The last two garnishments, for \$270.11 and \$330.25 respectively, have not yet been transferred to HUD from the Treasury. (*Sec'y Stat.*, ¶ 11; Exh. 1, Dillon Decl., ¶ 10). Petitioner Todd Finholdt has not filed a *Request for Hearing* in this case. (*See* Exh. 1, Dillon Decl., ¶ 6). Additionally, the Secretary states that HUD has no record indicating that HUD or the Treasury are pursuing Administrative Wage Garnishment against Erin Finholdt. (*See Sec'y Stat.*, ¶ 8; Exh. 1, Dillon Decl., ¶ 6).

On or about March 20, 2019, a Notice of Intent to Initiate Wage Garnishment Proceedings ("Notice") was mailed to Petitioner Todd Finholdt. (*See Sec'y Stat.*, ¶ 9; Exh. 1, Dillon Decl., ¶ 7). Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was given an opportunity to enter into a written repayment agreement under terms acceptable to HUD, but Petitioner has not entered into a written repayment agreement with HUD. (*See* Exh. 1, Dillon Decl., ¶ 8). Subsequently, a Wage Garnishment Order was issued to Petitioner's employer on April 19, 2019. (*See* Exh. 1, Dillon Decl., ¶ 9). As a result, the Secretary proposes a repayment schedule in the amount of \$292.08 per pay period or in the alternative, 15% of the Petitioner's disposable income. (*See Sec'y Stat.*, ¶ 11; Dillon Decl., ¶ 11).

DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. (*See* 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. (*See* 31 C.F.R. § 285.11(f)(8)(ii)). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue hardship to Petitioner, or that the alleged debt is legally unenforceable. *Id.*

As evidence of the Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement* together with the sworn Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (Exh. 1, Dillon Decl.) and a copy of the Subordinate

Note (Exh. 2, Note). Accordingly, this Court finds that the Secretary has met her initial burden of proof.

Petitioner Erin Finholdt filed her sworn declaration (“Pet’r Decl.”), as well as Petitioner Exhibit A (containing the Affidavit of Attorney Jason Iacovino, the payoff statement from her primary lender, and correspondence from her primary lender); Petitioner Exhibit B (containing letters and demand notices from her primary lender and HUD); Petitioner Exhibit C (containing lien releases executed by her title company); as well as three emails Petitioner sent in correspondence with HUD, dated May 23, 2019, July 10, 2019, and July 18, 2019 respectively (“Pet’r emails to HUD”), explaining her position.

Petitioner Erin Finholdt does not dispute that the debt is due and enforceable. (*See* Pet’r email to HUD, dated July 10, 2019). Petitioner instead alleges that she was unaware that her HUD loan remained unpaid because she had received Certificates of Release for HUD’s subordinate notes from her real estate attorney and title insurance company when she sold her home and paid the primary mortgage in full. (*See* Pet’r Decl., ¶¶ 7-8; Pet’r Exh. C). She states that she did not receive notice that the Note to HUD was unpaid until her tax refund was offset to pay the debt. (*See* Pet’r Decl., ¶ 8).

Nevertheless, Petitioner Erin Finholdt has not brought forth any evidence to show that HUD released the liens or that the Note was paid in full. In fact, as Petitioner points out, the Certificates of Release of HUD’s subordinate notes were executed by the title company based on representations made by her attorney that HUD had been duly paid, not by HUD itself. (*See* Pet’r Exh. C, p. 1). While Petitioner may wish to pursue a claim against her attorney and/or title company, her debt to HUD remains due and enforceable in the absence of a release from HUD. (*See Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005)).

Furthermore, although this case was docketed against both Erin and Todd Finholdt, only Todd Finholdt’s wages have been garnished, and HUD has no record of having received a *Request for Hearing* from Todd Finholdt. (*See Sec’y Stat.*, ¶ 11; Exh. 1, Dillon Decl., ¶ 6). Moreover, Erin Finholdt has not received a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings and HUD has no record of initiating an Administrative Wage Garnishment against her. (*See Sec’y Stat.*, ¶ 8; Exh. 1, Dillon Decl., ¶ 6). While Erin Finholdt may wish to bring a taxation offset case in this Court, any such case must be decided in a separate proceeding. Accordingly, this Court finds that all statements and filings by Petitioner Erin Finholdt are not properly before the Court and are hereby stricken from the record. In the absence of documentary evidence and/or a *Request for Hearing* from Petitioner Todd Finholdt, this Administrative Wage Garnishment case is dismissed *sua sponte* without prejudice.

However, if Petitioner Todd Finholdt seeks to negotiate a repayment schedule with HUD, he should be aware that this Court only has the authority to make a “determination of whether the debt is enforceable and past due.” (*See Edgar Joyner Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005)). This Court does not have the authority to establish “a debtor’s repayment amount or a schedule of payments.” *Id.* If Petitioner wishes to discuss a payment plan, Petitioner may discuss the matter with Michael DeMarco the Director of the HUD Financial Operations

Center, at 1-800-669-5152, extension 2859 or write to HUD Financial Operation Center, 50 Corporate Circle, Albany, NY 12203-5121.

ORDER

For the reasons set forth above 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 this case is **DISMISSED** without prejudice. The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of \$292.08 per pay period or 15% of Petitioner Todd Finholdt's disposable pay for each pay period.

SO ORDERED,



H. Alexander Manuel
Administrative Judge