

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

In the Matter of:

**Antonio Peña,**

Petitioner.

20-AM-0247-AG-150

09060278

July 5, 2022

**DECISION AND ORDER**

On or about July 21, 2020, Antonio Peña, (“Petitioner”) filed a Request for Hearing 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 this 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 June 10, 1996, Petitioner executed and delivered a Retail Installment Contract – Security Agreement (“Note”) to his primary lender, Oakwood Mobile Homes, Inc. (“Oakwood”). (*See Secretary’s Statement*, (“*Sec’y Stat.*”), ¶ 3; Exh. 2, Declaration of Rene Maldonado, Director of the Mortgage-Backed Securities Monitoring Division of Ginnie Mae (“Maldonado Decl.”), ¶ 3). Pursuant to a Guaranty Agreement between Petitioner’s primary lender, Oakwood, and the Government National Mortgage Association (“Ginnie Mae” “HUD” or “the Secretary”), the Note was assigned to Ginnie Mae. (*See Sec’y Stat.*, ¶ 3; Exh 2, Maldonado Decl., ¶ 4). Under the terms of the Note, Petitioner was to pay the principal amount of the unpaid balance on the Note until it was paid in full. (*See Exh. 1, Note*).

Subsequently, Petitioner failed to make payments on the Note and entered default. (*See Sec’y Stat.*, ¶ 4; Exh. 2 Maldonado Decl., ¶ 6). Thereafter, HUD attempted to collect the amounts owed from Petitioner, but Petitioner failed to pay. (*Sec’y Stat.*, ¶ 5; Exh. 2, Maldonado Decl., ¶ 6). As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$12,183.73 as the unpaid principal balance;
- b) \$7,039.15 as the unpaid interest on the principal balance through December 16, 2020;
- c) \$0.00 in administrative fees as of December 16, 2020; and
- d) Interest on said principal balance at 2% per annum until paid.

(*Sec’y Stat.*, ¶ 7; Exh. 2, Maldonado Decl., ¶ 6).

On or about July 20, 2020, a Notice of Intent to Initiate Wage Garnishment Proceedings (“Notice”) was mailed to Petitioner. (*See Sec’y Stat.*, ¶ 6; Exh. 2, Maldonado 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, which he has not done. (*See Sec’y Stat.*, ¶ 6; Exh. 2, Maldonado Decl., ¶¶ 7-8). According to the Secretary, HUD has received fifty-two offset payments from Petitioner which have been applied towards Petitioner’s debt, and are reflected in the Secretary’s calculations. (*See Sec’y Stat.*, ¶ 8; Exh. 2, Maldonado Decl., ¶ 6(e)). Petitioner has not provided HUD with a copy of his most recent pay statement or other documentation of his income. (*See Sec’y Stat.*, ¶ 8). As a result, the Secretary proposes a repayment schedule of 15% of the Petitioner’s disposable income. (*See Sec’y Stat.*, ¶ 9).

#### 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 undue financial hardship to Petitioner, or that the alleged debt is legally unenforceable. *Id.*

As evidence of Petitioner’s indebtedness, the Secretary has filed the *Secretary’s Statement*, together with a copy of the Note (Exh. 1, Note) and the sworn Declaration of Rene Maldonado, Director of the Mortgage-Backed Securities Monitoring Division of Ginnie Mae (Exh 2, Maldonado Decl.). Accordingly, the Court finds that the Secretary has met her initial burden of proof.

In his *Request for Hearing*, Petitioner has filed documentary evidence in an effort to prove that repayment of the alleged debt would cause Petitioner undue financial hardship. *Id.* Petitioner has also filed a statement contesting the amount of the debt. (*See Request for Hearing*).

In documents filed with his *Request for Hearing*, Petitioner states that he did not know “why I still owed [\$]30,889.77 when they were keeping my taxes all these years.” (*See* Pet’r Documents, filed July 21, 2020). He further contends that when he sold the home, his primary lender, Oakwood, told him that it would apply the proceeds from the sale to Petitioner’s loan

with HUD. *Id.* However, the Secretary has not alleged that Petitioner owes \$30,899.77. In fact, the Secretary has agreed with Petitioner that the offsets taken from Petitioner's taxes are to be applied to the debt and therefore, Petitioner owes only \$19,222.88. (*See Sec'y Stat.*, ¶ 7; Exh. 2, Maldonado Decl., ¶ 6). Furthermore, Petitioner has not shown that his primary lender, Oakwood, has satisfied Petitioner's outstanding debt or provided evidence of an agreement that Oakwood would be responsible for the debt. Petitioner's mere assertions that Oakwood is responsible for the debt are insufficient evidence to establish that HUD may not enforce the Note against him. (*See Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)). Moreover, Petitioner has not proven that he has repaid the Note in full.

Petitioner also has not provided evidence of any release from HUD of his obligation to repay the Note. (*See Sec'y Stat.*, ¶ 8). For the debt to be extinguished, HUD must provide a written release that specifically discharges the debtor's obligation, for valuable consideration accepted by the lender from the debtor, which would indicate intent to release. (*See Franklin Harper*, HUDBCA No. 04-D-CH-AWG41 (March 23, 2005); *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); *Cecil F. & Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); *Jesus E. & Rita de los Santos*, HUDBCA No. 86-1255-F262) (February 28, 1986)). HUD asserts that it never issued or authorized a release of Petitioner's Note and Petitioner has provided no evidence that he received a release from HUD. (*See Sec'y Stat.*, ¶ 8).

The idea that the Petitioner is not responsible for the debt when HUD has not released him is without merit. Petitioner provides no legal authority or language in the Note or Settlement Statement that suggests that the Note was paid or that Oakwood is responsible for the Note. Even if Petitioner had produced an agreement between himself and Oakwood, HUD, as a third-party, is not bound by any settlement or other debt transfer agreement Petitioner and Oakwood. (*See Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003) (citing *Wendy Kath*, HUDBCA No. 89-4518-L8, at 2)). Therefore, I find that, in the absence of documentary evidence showing that the Note was paid or that HUD released the debt obligation, the Note is due and enforceable, and Petitioner remains indebted to HUD, notwithstanding any dispute with Oakwood.

Petitioner has failed to submit any documentary evidence to prove that he is not indebted to the Department. I therefore find that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

Petitioner also argues that the Wage Garnishment Order will cause him undue financial hardship. (*See Request for Hearing*). In appropriate cases, this Court has the discretion to modify the Secretary's proposed repayment schedule where there is a *bona fide* showing of financial hardship. 31 C.F.R. §285.11(e)(8)(ii). However, we have been reluctant to exercise this discretion in cases where there is insufficient documentary evidence to prove financial hardship. On August 18, 2020, this Court ordered Petitioner to file documentary evidence showing that the imposition of a repayment schedule would create undue financial hardship. (*See Notice of Docketing, Order, and Stay of Referral*, filed August 18, 2020). In response to the Order, Petitioner provided little evidence of financial hardship. Petitioner submitted a sworn statement itemizing his monthly income and expenses, but did not provide his paystub or itemized receipts for any of his expenses. (*See Pet'r Documents*, filed July 21, 2020). Petitioner alleges in his

statement that his gross monthly income is \$2,080.00 and his monthly bills include: rent/mortgage for \$1,445.00; car payment for \$380.00; gasoline/auto repairs for \$400.00; utilities (electricity, gas, cable, trash, water) for \$730.00; food for \$350.00; medical expenses for \$100.00; clothing for \$150.00; and car insurance for \$200.00. (Pet'r Documents, filed July 21, 2020). However, as this Court informed Petitioner in its *Notice of Docketing, Order, and Stay of Referral*, Petitioner must submit evidence of financial hardship: "Petitioner may also present evidence that the terms of the repayment schedule [ . . . ] would cause financial hardship." (*See Notice of Docketing, Order, and Stay of Referral*, filed August 18, 2020). In the absence of documentary evidence showing Petitioner's monthly income and expenses, this Court cannot determine that Petitioner will experience financial hardship. Therefore, I find that the proposed repayment amount of 15% of Petitioner's disposable pay would not create undue financial hardship for Petitioner at this time. I find that a 15% garnishment would allow for repayment of the debt without causing undue hardship.

Petitioner should be aware that he is entitled to seek reassessment of this financial hardship determination in the event that he experiences materially changed financial circumstances. (*See* 31 C.F.R. §285.11(k)). If Petitioner seeks to negotiate a repayment schedule with the 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.* As such, while Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to "extend, recommend or accept any payment plan or settlement offer on behalf of the Department." *Id.* If Petitioner wishes to discuss a payment plan, Petitioner may discuss the matter with Michael DeMarco, Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859, or write to HUD Financial Operation Center, at 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, issued on August 18, 2020, 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 disposable pay for each pay period.

**SO ORDERED,**



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H. Alexander Manuel  
Administrative Judge