

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS  
Washington, D.C.

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In the Matter of:	)	Judge H. Alexander Manuel
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<b>SCOTT CLAIR,</b>	)	HUDOHA No. 20-AM-0300-AG-189
	)	
Petitioner.	)	Claim No. 721016972
	)	April 10, 2023

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**DECISION AND ORDER**

On or about September 28, 2020, Scott Clair, (“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.

As a preliminary matter, the Secretary has filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable*, dated November 5, 2020, (“*Sec’y. Stat.*”) attaching the *Declaration of Gary Sautter*, (“*Sautter Decl.*”), Acting Director, Asset Recovery Division, Financial Operations Center of the U.S Department of Housing and Urban Development, dated October 29, 2020, as Exhibit 1 thereto. On or about June 13, 2022, Petitioner filed *Petitioner’s Response* (“*Pet. Resp.*”) to the *Notice of Docketing, Order, and Stay of Referral*, dated October 8, 2020.

**BACKGROUND**

On or before November 25, 2013, Petitioner became delinquent on Petitioner’s mortgage payments with his primary lender. Petitioner’s primary mortgage was insured by HUD mortgage insurance. The primary mortgage was in default and Petitioner was threatened with foreclosure. *Sec’y. Stat.*, ¶¶ 3-4; Exhibit 1- *Sautter Decl.*, at ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary mortgage current. *Id.* In exchange for this foreclosure relief, on November 25, 2013, Petitioner executed a Subordinate Note ("Note") in the amount of \$20,320.97, in favor of the Secretary. *Sec’y. Stat.*, Exhibit 2 -

Note. Paragraph 4(A) of the Note cites specific events that cause the Note to become due and payable. One of those events is the payment in full of Petitioner's mortgage with the primary lender. Note at ¶ 4(A)(i).

On or about July 17, 2018, the FHA insurance on Petitioner's primary note was terminated, and the primary lender notified the Secretary that the primary note was paid in full. *Sautter Decl.* at ¶ 4; Note at ¶¶ 4(A)(i) & (iii).

Upon payment in full of the primary note, Petitioner was required to make payment to HUD on the Note at the "Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 or at such other place as [HUD] may designate in writing by notice to Borrower." Note at ¶ 4(B). Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD also became delinquent. *Sautter Decl.* at ¶ 5. The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful.

The Secretary maintains that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$20,320.97 as the unpaid principal balance as of October 8, 2020;
- (b) \$ 237.16 as the unpaid interest on the principal balance at 2% per annum through October 8, 2020;
- (c) \$853.24 as the unpaid penalties and administrative; and
- (d) Interest on said principal balance from October 9, 2020 at 2% per annum until paid.

*Id.*

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated July 22, 2020 ("Notice") was sent to Petitioner. *Id.*, ¶ 6. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. Petitioner did not enter into a written repayment agreement in response to the Notice. *Id.*, at ¶ 7.

In response, Petitioner states that:

"I previously have sent over financial documents stating that I cannot have 25% of my wages garnished...I had to walk away in 2008 from my loan after trying unsuccessfully to short sale it. The first notification was 11 years later in 2019 that it sold in 2015 and I was told that the original documents were sent to my previous address 6329 War Emblem CT. Which led to my wages being garnished. If forgiveness is not an option, then I would like to request a settlement option or a monthly payment plan possibly[.]

*Pet. Resp.* Petitioner appears to indicate that he did not realize that he owed the debt in this case, and that imposition of a repayment schedule for this alleged debt would impose undue financial hardship upon him. *Id.*

Petitioner's obligation to repay the Note derives from the terms of the Note itself. The express language of the Note, signed and agreed to by Petitioner, states under "Borrower's Promise to Pay" that, "In return for a *loan* received from Lender, Borrower *promises to pay* the principal sum of ... **\$20,320.97....**" "Lender" is defined under the heading "Parties" as "*the Secretary of Housing and Urban Development.*" Note at ¶¶ 1-2 (emphasis added). The Court finds this to be sufficient proof that Petitioner was aware of the terms of the Note. Indeed, Petitioner provides no proof to offset the Secretary's proof that the proceeds of the Note were applied to bring Petitioner's mortgage current with his primary lender. When Petitioner executed the Note, Petitioner was put on notice that the terms of the loan from HUD required repayment.

Moreover, Petitioner admits that he "walked away" from his obligation to repay his primary mortgage lender "in 2008." *Pet. Resp.* Although his dates do not appear to coincide with the evidence of record, Petitioner does not provide any documentation to refute the Secretary's evidence. Neither does Petitioner provide documentary evidence to prove that Petitioner's Note to HUD was ever repaid.

As the Note demonstrates, Petitioner's indebtedness to HUD is separate and apart from the indebtedness to the primary FHA-insured lender. As a result, the payments made to the primary lender to pay off Petitioner's primary mortgage are separate and apart from the payments needed to satisfy Petitioner's debt to HUD. Petitioner has presented no evidence that HUD's Note was paid in full or that HUD has released Petitioner from liability under the Note. *Sautter Decl.* at ¶ 5.

In the absence of a release from HUD discharging Petitioner from the obligation to repay the debt, Petitioner remains indebted to the Secretary in the amounts set forth above. See In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at p. 3 (December 8, 2008) ("... [F]or Petitioner not to be held liable for the debt, there must either be a release in writing from the lender...or valuable consideration accepted by the lender from Petitioner...")(citations omitted).

Petitioner's suggestion that he was unaware of the debt is inconsequential in this case. Petitioner has not brought forth any evidence to show that the amounts claimed by the Secretary were incorrectly calculated. This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or enforceable." (See *Michael R. Bridges*, HUDOHA No. 13-AM-0125-AG-054 (August 13, 2013); *Eric and Eliza Rodriguez*, HUDOHA No. 13-AM-0061-AG-023 (April 17, 2013)(citing *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005); *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). See also *Judith Herrera*, HUDOHA No. 12-M-CH-AWG27 (July 12, 2012)(wherein this Court found that a statement to Petitioner by a title company that "all was okay and Petitioner did not owe the debt" was insufficient evidence to prove that HUD had been paid).

Therefore, the Court finds Petitioner liable for the debt in this case in the amounts claimed by the Secretary.

With respect to Petitioner’s claim of undue financial hardship that would be imposed under the Secretary’s proposed repayment schedule. The Court calculates as follows. Petitioner has filed income statements and certain household bills along with his *Hearing Request*. He also included a sworn declaration that his monthly household income was \$8,592.00. This figure is derived from his tax return showing a combined gross annual income for he and his spouse of \$143,194.00. The practice of this Court is to deduct approximately 28% from the gross income figure in recognized deductions for income taxes, health care, and payroll deductions. That calculates to \$8,592 per month in “disposable pay.” From this amount, the Court calculates the following listed household expenses:

Mortgage	- \$1,854
Two car payments	- \$ 997 (\$772 + \$225)
Car insurance	- \$ 557
Cell phone	- \$ 296
Electricity	- \$ 228
Gas/heat	- \$ 129
Wifi/internet	- \$ 145
Water	- \$ 63
Home security	- \$ 63
	_____
TOTAL	\$ 4, 332.00

The Court has limited discretion to include expenses for food, clothing, gasoline, insurance, and other basic expenses in making hardship determinations. But even allowing an additional \$1,000.00 per month for these additional expenses, Petitioner’s monthly household expense do not exceed \$5,332.00, which is considerably less than the \$8,592.00 per month in disposable pay. Considering the amount of monthly income reported by Petitioner and his spouse the Court finds that undue financial hardship would not result from imposition of the Secretary’s proposed repayment schedule at this time.

The Court therefore authorizes repayment at the amount of 15% of Petitioner’s disposable pay, or the maximum amount authorized by law. This Court has authority to mitigate payments in determining whether financial hardship would be imposed in particular cases, but the Court does not have the authority to establish “a debtor’s repayment amount or a schedule of payments.”

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. 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. Petitioner is also entitled to seek reassessment of this financial hardship determination in the future in the event that he experiences materially-changed financial circumstances. *See* 31 C.F.R. §285.11(k).

**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 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

**APPEAL NOTICE: You have the right to move for reconsideration of this case before the HUD Office of Hearings and Appeals within 20 days of the date of this ruling or decision; or, thereafter, to reopen this case. Ordinarily, such motions will not be granted absent a demonstration by the movant that there is substantial new evidence to be presented that could not have been presented previously. An appeal may also be taken of this decision to the appropriate United States District Court. For wage garnishments cases, See 24 C.F.R. § 17.81, 31 C.F.R. § 285.119f), and 5 U.S.C. 701, et seq. For administrative offset cases, See 24 C.F.R. § 17.73(a), and 5 U.S.C. § 701, et seq.**