

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

In the Matter of:

Jonathan and Angela Hart,

Petitioners.

20-VH-0209-AG-123

721016668

September 17, 2021

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing* filed on June 25, 2020 by Petitioners' Jonathan and Angela Hart ("Petitioners") concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary").

JURISDICTION

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

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f)(4), on June 26, 2020, the Court stayed the issuance of a wage garnishment order until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* ("Notice of Docketing") at 2. On September 18, 2020, after the Court granted an extension, the Secretary filed his *Statement* ("Sec'y. Stat."), along with documentary evidence in support of her position. Petitioners filed their *Hearing Request* and documentary evidence on June 26, 2020 and subsequently filed additional evidence on October 20, 2020. *Petr.'s Stat.* This case is now ripe for review.

FINDING OF FACTS

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, as a result of a defaulted loan that was insured against non-payment by the Secretary. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts allegedly owed to the United States government.

In or about January 2017, the HUD-insured primary mortgage on Petitioners' home was in default, and Petitioners were threatened with foreclosure. *Secretary's Statement (Sec'y Stat.) Ex. A, Declaration of Brian Dillon (Dillon Decl.)* at ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioners' lender to bring the primary note current. (*Id.*) In exchange for foreclosure relief, on January 6, 2017, Petitioners executed a Promissory Note ("Note") in the amount of \$107,000.00 in favor of the Secretary. *Sec'y Stat., Ex. B, Note. Paragraph 4(A)* of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. Note at ¶ 4(A)(i).

On or about September 17, 2019, the FHA insurance on Petitioners' primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec'y Stat., Ex. A, Dillon Decl.* at ¶ 4; Note at ¶¶ 4 (A)(i) & (iii). Upon payment in full of the primary note, Petitioners were to make payment to HUD on the Note at the Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 or any such other place as [HUD] may designate in writing by notice to Borrower. *Sec'y Stat., Ex. B, Note* at ¶ 4 (B).

Petitioners failed to make payment on the Note as required. Consequently, Petitioners' debt to HUD is delinquent. *Sec'y Stat., Ex. A, Dillon Decl.* at ¶ 5. The Secretary has made efforts to collect this debt from Petitioners but has been unsuccessful. Therefore, Petitioners are justly indebted to the Secretary in the following amounts through August 30, 2020:

- a) \$107,000.00 as the unpaid principal balance;
- b) \$1,426.96 as the unpaid interest on the principal balance at 2% per annum;
- c) \$4,120.31 as the unpaid penalties;
- d) \$52.28 as the unpaid administrative cost as of August 30, 2020;
- e) interest on said principal balance from September 1, 2020 at 2% per annum until paid. *Id.*

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated June 4, 2020 ("Notice") was sent to Petitioners. *Id.* at ¶ 6. The Secretary respectfully requests that the Court find Petitioners' debt past due and legally enforceable and the Secretary's proposed repayment schedule fair. The Secretary has not successfully obtained a copy of Petitioners' most recent pay statements to determine a repayment schedule that could be proposed to the Court. *Id.* at ¶ 15. Therefore, the Secretary proposes a repayment schedule of \$3,128 per month, which will liquidate the debt within three years as recommended by the Federal Claims Collection Standards, or fifteen percent of Petitioners' disposable pay. *Id.*

DISCUSSION

Petitioners claim, as a basis for their appeal, insufficiency of notice and inaccurate debt amount. *Response to Sec'y. Stat.* ¶ 1.

First, regarding insufficiency of notice, Petitioners claim that the Secretary failed "to attach or demonstrate any written notice from the primary lender, FHA, or HUD directed to and delivered to Petitioners in connection with their obligation to pay and instructing them how to pay, how

much to pay and where to pay.” *Petr’s. Statement* at 1. The Court has previously held that when a Petitioner executes documents in which Petitioner agrees to repay a sum of money owed, and in which there are instructions on how to repay it, the debt is enforceable. *In re Karl A. Mason*, HUDOA No.09-H-NY-AWG108 (November 12, 2009). In *Karl*, the Secretary provided evidence that the Petitioner not only had acknowledged that the subject debt existed, but also acknowledged that Petitioner was bound to repay said debt. The Court consequently found that the Secretary met his burden of proof and was ordered to use wage garnishment as a means to collect the debt owed. See also, *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009).

In this case, similar to *Karl A. Mason*, the record shows that the Note signed by Petitioners provided sufficient notice to them regarding the debt amount promised to be paid, the manner of such payment, the date the payment was due, and the address to send the payment. *Sec’y Stat.*, Ex. B, Note ¶ 2-4. The Note further detailed that the “Borrower [herein Petitioners] promises to pay the principal sum of one hundred seven thousand and no/100 dollars (\$107,000.000).” *Id.* at ¶ 2. Petitioners, by signing the Note, acknowledged the amount owed and therefore agreed to its terms regarding repayment. *Id.* at p. 2. Petitioners, by their own admission, further acknowledged in their *Hearing Request* receipt of the Note in February 2020 as a notification that the subject debt was due. *Hearing Request* at 4. Again in June 2020, Petitioners were notified of the existence of the debt upon receipt of their Notice of Intent. See *Hearing Request*, Attached Notice of Intent dated June 4, 2020. The Notice of Intent specifically included instructions on how to repay the debt in full or opt to enter into a repayment agreement. *Id.* Based on the Court’s review of the record, notice was sufficient, and Petitioners’ claim is thus meritless.

Next, Petitioners dispute the debt amount claimed by HUD. Petitioners acknowledge that they are indebted to HUD, but they take exception to including in the total debt amount additional interest and fees which has since increased the total debt amount to \$148,565.11. *Petitioners’ Statement* at 1. In response, the Secretary claims that the law requires interest, administrative costs, and penalties to be charged, and that the Department of the Treasury has added such fees in order to be consistent with governing rules and regulations.

HUD is required by statute and regulation to charge interest and fees on past due debts. 1900.25 REV-5 § 2-5 (B). The Debt Collection Improvement Act of 1996 requires HUD to refer delinquent debts to the U.S. Department of the Treasury (“Treasury”) for collection. 31 U.S.C. § 3711(g). When HUD sends a debt to Treasury, Treasury is authorized to charge HUD a fee for its collection efforts. 31 U.S.C. § 3711(g)(6). Such fees are then incurred by the debtor as the debtor’s responsibility until such time as the debt is paid in full. Moreover, HUD is required to charge the debtor interest, administrative costs, and penalties. 31 U.S.C. § 3717(a) & (e)(1)-(2). Fees and administrative costs (which includes the fee charged by Treasury) total 30% of any amount collected by Treasury. Payments made by the debtor are first applied to fees, then to interest, and then finally to the principal. 31 C.F.R. § 901.9(f).


Petitioners failed to provide a sufficient legal basis in this case that would otherwise persuade the Court to waive the interest and fees that have accrued to date on the subject debt. Petitioners also failed to demonstrate, by a preponderance of the evidence, that the interest and fees accrued are in fact not authorized in this case. As such, this claim is also without merit.

As a final point, Petitioners request that “an agreement may be reached between the parties regarding the interest and fees as well as a repayment plan.” The alternative repayment plan offered by Petitioners is beyond the scope of the Court’s jurisdiction. This Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Id. Petitioners may wish instead to negotiate repayment terms with the Department to consider settlement options, or to discuss this matter with Counsel for the Secretary or the Director of HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203- 5121, who may be reached at 1-800-669-5152, extension 2859. See Marites Lara, HUDOA No. 19-AH-0191-AG-052 (October 22, 2020). Petitioners also may request a review of their financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

For the reasons set forth above, the Order imposing the stay of referral of this matter on June 26, 2020 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 an amount equal to 15% of Petitioner’s disposable pay.

SO ORDERED.


Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this Court’s written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.