

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 |
| |) | |
| JOHN GEARHART, |) | HUDOHA No. 21-AM-0034-AG-025 |
| |) | |
| Petitioner. |) | Claim No. 721012892 |
| |) | April 11, 2023 |

DECISION AND ORDER

On or about December 10, 2020, John Gearhart, (“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 before December 11, 2014, Petitioner was 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. *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable* (“*Sec’y. Stat.*”), ¶ 2, Exhibit 2 - *Declaration of Larry Gagliardi, Jr.*, Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center (“*Gagliardi 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 December 2, 2014, Petitioner executed a Partial Claims Promissory Note (“*Note*”) in the amount of \$7,610.49, in favor of the Secretary. *Sec’y. Stat.*, Exhibit 1 - *Note*. Paragraph 3(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 ¶ 3(A).

On or about September 29, 2017, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Gagliardi Decl.* at ¶ 4; Note at ¶ 3(A).

Upon payment in full of the primary note, Petitioner was required to make payment to HUD on the Note at the "U.S. Department of HUD, c/o Novad Management Consulting, Shepard's Mall, 2401 NW 23rd St., Suite 1A1, Oklahoma City, OK 73107 . . . or any such other place as Lender may designate in writing by notice to Borrower." Note at ¶ 3(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. *Gagliardi Decl.* at ¶¶ 3-5. The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. *Id.*

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

- (a) \$7,292.60 as the unpaid principal balance as of November 30, 2020;
- (b) \$92.11 as the unpaid interest on the principal balance at 1% per annum through November 30, 2020;
- (c) \$441.26 as the unpaid penalties and administrative costs as of November 30, 2020; and
- (d) Interest on said principal balance from December 1, 2020 at 1% per annum until paid.

Id., ¶ 8.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated November 11, 2020 ("Notice") was sent to Petitioner. *Id.*, at ¶ 7. 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 ¶ 9.

In response, Petitioner does not refute the Secretary's evidence that the debt is owed. There does not appear to be any material factual dispute regarding Petitioner's to repay the Note. The 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 ... **\$7,292.60....**" "Lender" is defined under the heading "Parties" as "***the Secretary of Housing and Urban Development.***" Note at ¶¶ 1-3.(emphasis added). The Court finds this to be sufficient proof that Petitioner was aware of the terms of the Note and Petitioner does not appear to deny the obligation to repay the Note. *See Petitioner's Hearing Request.*

Petitioner provides no documentary evidence to prove that Petitioner's Note to HUD was ever repaid. The primary mortgage was paid off with a release being issued by the primary lender, but this does not demonstrate that Petitioner has paid the indebtedness to HUD or that HUD has issued a release. When Petitioner executed the Note, Petitioner was put on notice that the terms of the loan from HUD required repayment. 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. *Gagliardi 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 seeks to establish that the alleged debt in this case is not owed, not properly calculated, or is not legally enforceable. 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 that imposition of a repayment schedule at this time, would result in undue financial hardship for him, Petitioner stated on February 10, 2021 that he has “sufficient 401k monies with [his] employer to pull out the payoff of this debt.” *Petitioner’s email*, dated February 10, 2021. He further asks that he “be given a couple of weeks to complete this transaction before [HUD] place[s] any orders for garnishment.” *Id.* If has been more than two years since Petitioner acknowledged that he had sufficient assets to pay off this debt to HUD. Accordingly, the Court finds that undue financial hardship would not be caused by imposition of a 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,



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.