

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

In the Matter of:)	Judge H. Alexander Manuel
)	
SHEILA STOKES RANDOLPH,)	HUDOHA No. 21-AM-0172-AG-091
)	
Petitioners.)	Claim No. 780816952
)	July 13, 2023

DECISION AND ORDER

On or about June 22, 2021, Sheila and Kevin Randolph, (“Petitioners”) 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 May 27, 2020, Petitioners became delinquent on Petitioners’s loan payments with Petitioners’s lender, Admirals Bank of Providence, R.I. *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable and Secretary’s Proposed Repayment Schedule* (“*Sec’y. Stat.*”), ¶ 3, Exhibit B- *Declaration of Brian Dillon* (“*Dillon Decl.*”) at ¶ 3. The alleged debt in this case originates from an original promissory note executed by Petitioners to Admirals Bank on October 26, 2015, and was recorded in th Leon County Clerk’s Office in Book 4898, Page 900 on February 26, 2016. *Id.*, ¶ 8; *Sec’y. Stat.*, Exhibit A – Title I Note-Secured, “Note”.

Petitioners failed to make all payments due on the Note at the place and in the amount specified in the Note. Consequently, Petitioner's debt to HUD became delinquent. *Dillon Decl.* at ¶ 3. Ownership of the Note was subsequently assigned by Admirals Bank to HUD. *Id.* The Secretary has made efforts to collect this debt from Petitioners but has been unsuccessful. *Id.*, ¶ 4.

The Secretary maintains that Petitioners are indebted to the Secretary in the following amounts:

- (a) \$22,797.23 as the unpaid principal balance as of June 30, 2021;
- (b) \$1,067.53 as the unpaid interest on the principal balance at 2% per annum through June 30, 2021;
- (c) \$1,475.05 as the unpaid penalties and administrative costs through June 30, 2021;
and
- (d) interest on said principal balance from July 1, 2021 at 2% per annum until paid.

Dillon Decl., ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated June 2, 2021 ("Notice") was sent to Petitioners. *Id.*, at ¶ 6. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioners were 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 ¶¶ 7-8.

There does not appear to be any material factual dispute in this case. 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 Petitioners, require Petitioners to repay the full amount of the Note. The Court finds this to be sufficient proof that Petitioners were aware of the terms of the Note and that Petitioners do not appear to deny the obligation to repay the Note.

Petitioners do, however, appear to have a different factual account for the treatment of Petitioner's debt on the Note, that the Court does not find to be material to Petitioner's liability for the debt. Petitioners appear to have mistaken their payment of another promissory note that they maintained with Admirals Bank with the Note on the alleged debt in this case. *Petitioner's Documentary Evidence* ("Pet.Doc. Evid."), filed on August 23, 2021; *Dillon Decl.*, ¶ 8. The Satisfaction of Mortgage, dated September 15, 2015, which was recorded in the Leon County Clerk's Office, Book 4854, Pages 1036-1043 on or about November 15, 2015, is wholly separate from the debt in this case which is based on the Note assigned from Admirals Bank to HUD, which is dated October 26, 2015, and was recorded on February 26, 2016 in the Leon County Clerk's Office in Book 4898, Page 900.

Id.

Petitioners provide no documentary evidence to prove that Petitioner's Note to HUD was ever repaid. Petitioner's reliance on repayment of another debt with Admirals Bank as evidenced by the Satisfaction of Mortgage, dated September 15, 2015, is immaterial to the issue of whether or not Petitioners have repaid the debt in this case. This does not demonstrate that Petitioners have paid the indebtedness to HUD or that HUD has issued a release. When Petitioners

executed the Note, Petitioners were 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 Petitioners's other indebtedness to Admirals Bank. As a result, the payments made on the other loan 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. *Dillon Decl.* at ¶ 11.

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).

Petitioners have also 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 Petitioners liable for the debt in this case in the amounts claimed by the Secretary.

Petitioners have also not filed documentary evidence to prove that undue financial hardship would be created by imposition of a repayment schedule. 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 negotiate a "debtor's repayment amount" or a "schedule of payments."

As such, while Petitioners 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.