

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

In the Matter of:

Michael Bridges,

Petitioner

21-VH-0092-AG-053

0581702 Oakwood 9249

October 28, 2022

DECISION AND ORDER

On March 15, 2021, Michael Bridges (“Petitioner”) filed a hearing request concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720A), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts allegedly owed to the United States government.

JURISDICTION

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment pursuant to 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f) (8) (i). Thereafter, Petitioner must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f) (8) (ii). In addition, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. Id.

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f) (4), on March 17, 2021, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On May 14, 2021, the Secretary filed her *Statement* along with documentation in support of her position. To date, Petitioner has failed to file sufficient documentary evidence in support of his claim of financial hardship, or in response to the orders issued by this Court. This case is now ripe for review.

FINDINGS OF FACT

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A, because of a defaulted loan that was insured against non-payment by the Secretary.

On March 18, 1994, Petitioner, Michael R. Bridges, executed and delivered a Retail Installment Contract-Security Agreement (“Note”) to Augusta Housing Center in the amount of \$55,195.00, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). *Secretary’s Statement*, (*Sec’y. Stat.*), ¶ 2, Ex. A, Note.

Contemporaneously, Augusta Housing Center assigned the Note to Home Owners Funding Corp of America. Thereafter, Home Owners Funding Corp of America assigned the note to Oakwood Acceptance Corporation. *Sec’y. Stat.*, ¶ 2, Ex. A, Note at 2, 4.

Oakwood Acceptance Corp. was defaulted as an issuer of Mortgage-Backed Securities (“MBS”) due to its failure to comply with the Government National Mortgage Association’s (“GNMA’s”) MBS program requirements. *Sec’y. Stat.*, Ex. B, ¶ 3, Declaration of Rene Mondonedo (*Mondonedo Decl.*)¹ at ¶ 4.

Upon default by Oakwood Acceptance Corp., all of its rights, title, and interest in Petitioner’s loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Oakwood Acceptance Corp and GNMA. (*Id.*)

As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. *Sec’y. Stat.*, Ex. B, ¶ 5, *Mondonedo Decl.* at ¶ 5. Petitioner is currently in default on the Note. The Secretary has made efforts to collect from Petitioner but has been unsuccessful. Petitioner is justly indebted to the Secretary in the following amounts:

- a) \$33,185.41 as the unpaid principal balance;
- b) \$32,149.40 as the unpaid interest on the principal balance through March 22, 2021 at 2% per annum;
- c) \$0 in administrative fees; and,
- d) Interest on said principal balance at 2% per annum until paid.

Sec’y. Stat., Ex. B, ¶ 6, *Mondonedo Decl.*, at ¶ 6.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated February 10, 2021 was sent to Petitioner. *Sec’y. Stat.*, Ex. B, ¶ 6, *Mondonedo Decl.*, 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. To date, Petitioner has not entered into a written repayment agreement. Id.

DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims in his *Hearing Request* that the proposed garnishment amount would create a financial hardship.

¹ Rene Mondonedo is the Director of the Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association (“Ginnie Mae”).

Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), Petitioner is required to show, by a preponderance of the evidence, that the proposed wage garnishment repayment schedule would create a financial hardship. In a case involving a claim of financial hardship, Petitioner “must submit ‘particularized evidence,’ including proofs of payment, showing that she will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation.” Ray J. Jones, HUDAJF 84-1-OA at 2 (March 27, 1985).


Herein, Petitioner only submitted a *Hearing Request* without introducing any documentary evidence to support his position. In subsequent *Orders* issued by the Court, Petitioner was informed that “documentary evidence should not be limited to a mere list of expenses, but instead must include proof of payment, where applicable.” (Emphasis in original). The Court outlined, with specificity, the types of documentary evidence that could be considered in reviewing Petitioner’s claim. Petitioner however failed to produce such evidence in compliance with the Court’s Orders.

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 unenforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). In the absence of documentary evidence that supports Petitioner’s position, the Court is unable to determine whether the proposed wage garnishment repayment schedule would create a financial hardship for Petitioner. Thus, the Court finds Petitioner’s financial hardship claim fails for lack of sufficient proof.

Without a record of evidence from the Petitioner that either refutes or rebuts what the Secretary has presented, the Court must also find that Petitioner remains contractually obligated to pay the subject debt claimed by the Secretary.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount of 15% of Petitioner’s monthly disposable pay.

SO ORDERED.

Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of the 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.