

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

In the Matter of:

Geoffrey C. Duncan,

Petitioner

21-VH-0217-AG-124

721017226

January 23, 2023

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hearing Request*”) filed by Geoffrey C. Duncan (“Petitioner”) on August 3, 2021, 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”). 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.

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. This hearing is conducted in accordance with the procedures set forth at 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 August 11, 2021, this 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 October 12, 2021, the Secretary filed his *Statement (Sec’y. Stat.)* along with documentation in support of her position. To date, Petitioner has failed to file the necessary additional documentary evidence in support of his position. 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 3720D, as a result of a defaulted loan that was insured against non-payment by the Secretary.

On or about August 13, 2019, Geoffrey C. Duncan (“Petitioner”) executed and delivered to the Secretary a Promissory Note (“Note”) dated July 31, 2019, in the principal amount of \$85,481.06. *See Sec’y Stat.* ¶ 4; Ex. 1, Note ¶ 2. HUD advanced funds to Petitioner’s FHA insured mortgage lender as means of preventing the lender from foreclosing. *See Sec’y Stat.*, ¶ 2; Ex. 2, *Declaration of Gary Sautter* (“*Sautter Decl.*”). In exchange for such funds, Petitioner executed the Note in the favor of the Secretary. *See Sec’y Stat.*, ¶ 2; *Sautter Decl.* ¶ 4.

By the terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs (4)(A)[o]n September 01, 2049 or, if earlier, when the first of the following events occurs: (i) borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary; or (ii) the maturity date of the primary note has been accelerated; or (iii) the primary note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary.

On or about December 23, 2019, the FHA Insurance on Petitioner’s primary mortgage was terminated, as the lender indicated that the mortgage was paid in full. *See Sec’y Stat.*, ¶ 5; *Sautter Decl.* ¶ 4. Because the primary note and mortgage were paid in full, and the FHA mortgage insurance was terminated, the Note became immediately due and payable, pursuant to the terms of the Note. *See Sec’y Stat.* ¶ 5; Ex. 1, Note ¶ 4(A)(i). HUD’s records indicate that the debt owed pursuant to the Note is enforceable and past due. *Id.*

HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *See Sec’y Stat.*, ¶ 6; Ex. 2, *Sautter Decl.*, ¶ 4. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$85,481.06 as the unpaid principal balance as of July 30, 2021;
- b) \$ 1425.00 as the unpaid interest on the principal balance at 2.0% per annum through July 30, 2021;
- c) \$ 2490.66 as the unpaid penalties and administrative costs through July 30, 2021; and
- d) interest on said principal balance from August 1, 2021, at 2.0% per annum until paid.

See Sec’y Stat., ¶ 8; Ex. 2, *Sautter Decl.*, ¶ 5.

On July 5, 2021, a *Notice of Intent to Initiate Wage Garnishment Proceedings* (“*Notice*”) was mailed to Petitioner. *See Sec’y Stat.*, ¶ 7; *Sautter Decl.*, ¶ 6. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement. Petitioner did not enter into a repayment agreement or pay the debt in full in response to the *Notice*. *Id.*

The Secretary proposes a repayment schedule of \$338.61, or an amount equal to 15% of Petitioner's disposable income. *See Sec'y Stat.*, ¶ 14.

DISCUSSION

Petitioner challenges the debt amount claimed by the Secretary and questions the enforceability of the subject debt against him based on a loan modification agreement between Petitioner and Freedom Mortgage. *See Pet'r's Hr'g Req.* Petitioner did not offer any evidence in support of his position despite being ordered several times by the Court to produce the same for the Court's review. But Petitioner states that:

With the medical bills piling up, we started drowning in debt and had to do something to ease the burden a bit. One of the ways to do that was to get a loan modification on our house...A couple of weeks before we sold our house, the loan modification went through, and our house payment had dropped roughly \$400 a month. Unbeknownst to us, the Loan Holder (Freedom Mortgage) had somehow deducted all payments to HUD (85 k+) until the loan was paid off or until the house was sold.

Petitioner's execution of the Note immediately obligated him to make a payment to HUD in the event that "the borrower has paid in full all amounts due under the primary Note and related mortgage, deed of trust or similar Security Instruments issued by the Secretary." *See Sec'y Stat.*, Ex. 1, Note ¶ 4(A)(i). The Note contained specific instructions on how and where payment should be made to the Secretary, and those instructions were unambiguous. *Id.* at Note ¶ 4(B). The bank, herein Freedom Mortgage, and Petitioner are the parties to the contract regarding the primary mortgage and the *Loan Modification Agreement* to which Petitioner refers. The parties to the Note are actually Petitioner and HUD. *See Sec'y. Stat.*, Ex. 2, Note. The terms of the *Loan Modification Agreement* cannot now dictate the obligations of the parties under the terms of the Note because they are distinctly separate contracts, and because HUD specifically is not a party to the *Loan Modification Agreement*. *See Wendy Letis*, HUDOHA No. 18-VH-0057-AG-035 at 3-4 (May 3, 2019).

Petitioner's understanding that the loan modification serves as a basis for releasing Petitioner from his payment obligations under the Note is simply misplaced. "A person who signs a written contract is bound by its terms regardless of his or her failure to read and understand its terms." *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004) (citing *Betaco, Inc. v. Cessna Aircraft Co.*, 32 F.3d 1126, 1136 (7th Cir. 1994)). So, Petitioner's understanding that the subject debt was discharged upon full payment of the mortgage through loan modification or until the property was sold is in error, and as a result, the terms of the Note remain intact.

To prove otherwise, Petitioner must offer into evidence proof of full payment either in the form of a written release from HUD for the subject debt or evidence of valuable consideration accepted by HUD from Petitioner. *See Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to refute that the debt claimed by the Secretary is not past due and or unenforceable." *See Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), citing *Bonnie Walker*,

HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, in the absence of evidence from Petitioner to refute or rebut that which was presented by the Secretary, the Court finds Petitioner's claim fails for lack of proof.

ORDER

Based on the foregoing, Petitioner remains contractually obligated to pay the subject debt. The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury on August 11, 2021 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 of \$338.61, or an amount equal to 15% of Petitioner's disposable income.

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 this *Decision and Order*, and shall be granted only upon a showing of good cause.