

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
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<b>Gonzalo Raya,</b>	)	HUDOHA No. 22-AM-0051-AG-038
	)	
Petitioner.	)	Claim No. 721017906
	)	August 10, 2023

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**DECISION AND ORDER**

On December 2, 2021, Gonzalo Raya, (“Petitioner”) filed a Request for Hearing (“*Request*”) 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.

As a preliminary matter, the Secretary has filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable*, dated January 13, 2022, (“*Sec’y. Stat.*”) attaching the *Declaration of Brian Dillon*, (“*Dillon Decl.*”), Director, Asset Recovery Division, Financial Operations Center of HUD, dated January 7, 2022, as Exhibit 2 thereto. Upon consideration, the Court finds that the *Sec’y. Stat.*, together with the documentary evidence attached thereto constitutes *prima facie* evidence that the alleged debt in this case is due and owing by Petitioner.

In his *Request*, Petitioner acknowledges the debt is owed.<sup>1</sup> Therefore, after careful review of the record before it, this Court finds that the debt is owed in full and legally enforceable.

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<sup>1</sup> While Petitioner’s *Request* includes an “X” in the checkbox “Amount of the debt - I do not owe the full amount of the debt,” he also states “I do acknowledge the amount owed ... is accurate.” *Request*, attachment with handwritten date “11/19/2021” (hereinafter, “*Pet. Stat.*”). Accordingly, because this statement appears to be unambiguous, this Court relies on Petitioner’s statement rather than the mark in the checkbox.

Petitioner further claims that the proposed garnishment would cause him financial hardship. In support of his claim, Petitioner provides a signed financial statement, copies of earnings and income records, and invoices for medical bills due. Upon careful analysis of this documentation and the *Secretary's Statement*, this Court finds that payment of the full debt as proposed by the Secretary would cause Petitioner undue financial hardship. Accordingly, the proposed garnishment is reduced to 10% of Petitioner's disposable income.

## BACKGROUND

Petitioner and his wife, Maria R. Raya, executed and delivered to the Secretary a *Subordinate Note* ("Note") dated October 21, 2013, in the amount of \$24,498.87, in exchange for HUD advancing funds to Petitioner's FHA insured mortgage lender. *Sec'y Stat.* at ¶¶ 2-3, *Dillon Decl.* at ¶ 4, Exhibit 1. The *Note* described four events that would make the debt immediately due and payable. *Sec'y Stat.* at ¶ 4, *Note* at ¶ 4(A). One of these events was payment in full of the mortgage. *Id.*, *Dillon Decl.* at ¶ 4. On or about July 23, 2020, Petitioner paid off the mortgage when he refinanced to obtain additional funds. *Pet. Stat.* at ¶¶ 2-3, *Sec'y Stat.* at ¶ 5. Thus, the mortgage was paid in full, and the debt became due. *Sec'y Stat.* at ¶ 5, *Dillon Decl.* at ¶ 4.

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

- (a) \$24,498.87 as the unpaid principal balance through December 30, 2021;<sup>2</sup>
- (b) \$142.87 as the unpaid interest on the principal balance at 2.0% per annum through December 30, 2021;
- (c) \$1,527.11 as unpaid penalties and administrative costs through December 30, 2021; and
- (d) 2% interest on said principal balance until paid.

*Sec'y Stat.* at ¶ 8, *Dillon Decl.* at ¶ 5.<sup>3</sup>

A *Notice of Intent to Initiate Administrative Wage Garnishment Proceedings* ("Notice") dated October 21, 2021, was sent to Petitioner's last known address. *Sec'y Stat.* at ¶ 6, *Dillon Decl.* at ¶ 6. In response, Petitioner filed his *Request* with this Court. On December 10, 2021, this Court ordered that referral of this matter by the Secretary to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order be stayed until the issuance of this Decision.

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<sup>2</sup> The Secretary lists the unpaid principal balance as being "through December 3-, 2021." *Sec'y Stat.* at § 8a. It appears that the Secretary intended to refer to "December 30, 2021," as referenced in the *Dillon Decl.* at ¶ 5(a).

<sup>3</sup> The Secretary states that the unpaid interest accrues at "1.0% per annum." *Sec'y Stat.* at § 8d. It appears that the Secretary intended to state that the interest accrues at "2.0% per annum," as referenced in the *Dillon Decl.* at ¶ 5(b).

## DISCUSSION

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 terms agreeable to HUD. *Sec’y. Stat.* at ¶ 7, *Dillon Decl.* at ¶ 7. Petitioner requested to do so, but as of this date, no such agreement has been executed. *Pet. Stat.* at ¶ 4, *Sec’y. Stat.* at ¶ 7, *Dillon Decl.* at ¶ 7.

Petitioner, in his *Request*, acknowledges owing the full amount. *Pet. Stat.* at ¶ 4. After careful review, this Court agrees. Specifically, Petitioner’s obligation to repay the *Note* derives from the terms of the *Note* itself. For example, the express language of the *Note*, signed and agreed to by Petitioner, states “[i]n return for a loan received from Lender, **Borrower promises to pay the principal sum of \$24,498.87 ... to the order of Lender**” where “Lender” means “the Secretary of Housing and Urban Development...” *Note* at ¶¶ 1 and 2 (emphasis added). Accordingly, the full amount of the debt is owed, *i.e.*, it is enforceable and past due.

Petitioners are entitled to submit evidence that the repayment of this loan in the manner proposed by the Secretary would create a financial hardship. *See* 31 C.F.R. § 285.11(k). If financial hardship is found, the amount garnished may be downwardly adjusted to reflect the Petitioner’s financial condition. *See id.*

Petitioner states that payment of the debt will cause him financial hardship. *Pet. Stat.* at ¶ 4. Petitioner provides a signed financial statement, earnings and income records, and medical invoices in support of his claim. *See generally Request.* He claims a monthly disposable income (as of October 29, 2021) of \$4,061.<sup>4</sup> The records also show his wife as having an annual income of \$6717. He lists monthly household expenses of \$1,790 (housing), \$1,540 (food), \$1,196 (electricity), \$48.00 (gas), and \$2,497 (“Other”). He also lists \$11,500 in medical-related debt and annual payments of \$1,605 (insurance) and \$1,609 (real estate taxes).

The financial information submitted by Petitioner is generally found to be credible. However, the amounts for food and electricity appear excessive, and the \$2,497 listed as “Other” is excluded from consideration for lack of evidence explaining its nature. Further, while Petitioner provides numerous invoices and collection notices regarding the medical debt, no documents evidence monthly payments related to that debt or whether Petitioner has reasonably attempted to negotiate that debt with his creditors. Taking these concerns into account, this Court reasonably presumes monthly expenses of \$800 (food), \$200 (electricity), and \$500 (medical debt), totaling \$3,877. Therefore, a 15% garnishment of Petitioner’s monthly disposable income of \$4,061 would prevent Petitioner from meeting his expenses, thereby causing him financial hardship.

The Secretary states that Petitioner’s information has been reviewed and a wage garnishment repayment schedule of \$353.51 biweekly would not cause Petitioner financial hardship. *Sec’y. Stat.* at ¶ 9. Although the Petitioner has not proposed an alternative rate of garnishment, this Court has the authority to alter the proposed garnishment based upon the

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<sup>4</sup> All amounts have been rounded to the nearest dollar. Petitioner provided multiple earnings statements that vary based on the amount of overtime. *Request.* This Court’s determination is based on Petitioner’s October 29, 2021 statement, which is the same statement that the Secretary provides. *Sec’y. Stat., Exhibit B.*

record before it and applies its authority in this matter. *See generally* 24 C.F.R. § 17.81, 31 C.F.R. § 285.11(f)(11)(ii) and (iii). Specifically, the Secretary's proposed wage garnishment repayment schedule of \$353.51 biweekly would prevent Petitioner from meeting his monthly expenses. Thus, the Secretary's proposed wage garnishment repayment schedule is reduced from 15% of Petitioner's disposable income to 10%. *See* 31 C.F.R. § 285.11(k)(3).

Therefore, 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).

Should Petitioner 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, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is:

**ORDERED** that the Secretary is authorized to seek administrative wage garnishment in the amount of 10% of Petitioner's disposable income per month, or such other amount as determined by the Secretary, not to exceed 10% of Petitioner's disposable income per month. It is

**FURTHER ORDERED** that the *Stay of Referral* of this matter to the U.S. Department of the Treasury for collection that was previously entered in this case is hereby VACATED.

SO ORDERED,



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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.