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

In the Matter of:	)	
Angela and Jonathan Hart,	)	22-AM-0059-AG-042 Claim No. 721016668
Petitioners.	)	October 13, 2023

ORDER GRANTING PETITIONERS PARTIAL RECONSIDERATION

On December 3, 2021, Angela Crystal Hart and Jonathan W. Hart ("Petitioners") 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").[1] Gregory T. DuMont appears as Petitioners' counsel.

Petitioners' *Request* follows this Court's decision, In re Jonathan and Angela Hart, HUDOHA No. 20-VH-0209-AG-123 (Sept. 17, 2021) (hereinafter "In re Hart"). In re Hart found Petitioners' debt legally enforceable and past due and authorized the Secretary to garnish Petitioners' disposable pay to collect the debt. Petitioners' *Request* contests that outcome and also claims the garnishment of 15% of their disposable pay, as ordered by In re Hart, has caused them financial hardship. Thus, Petitioners' *Request* is considered a motion to reconsider In re Hart and the resulting garnishment.

In response, on February 14, 2022, the Secretary filed the *Secretary's Statement that Petitioner's [sic] Debt is Past Due and Legally Enforceable and Secretary's Proposed Repayment Schedule* ("*Secretary's Statement*" or "*Sec'y. Stat.*"). The *Declaration of Brian Dillon* ("*Dillon Decl.*"), Director, Asset Recovery Division, Financial Operations Center of HUD, dated January 25, 2022, is attached to the *Secretary's Statement* as Exhibit A. Petitioners have also filed *Petitioners' Request for ADR*, *Petitioners' Statement*, and *Petitioners' Statement in Response to the Secretary*.

[1] 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 has designated the administrative law 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.

On May 13, 2022, the Secretary filed the *Secretary's Motion to Dismiss* ("*Secretary's Motion*"). The Secretary seeks to dismiss Petitioners' *Request*, contending that In re Hart adjudicated the issues presented such that reconsideration is limited to only financial hardship which the Secretary avers Petitioners do not request. See 31 C.F.R. § 285.11(k). However, as discussed above, Petitioners do indeed request reconsideration of financial hardship (*Request* at 1) and provide credible evidence (copies of their pay stubs and a signed financial statement listing their monthly expenses) in support thereof. Therefore, this Court considers Petitioners' *Request* regarding that issue and reviews the *Secretary's Motion* as a response in opposition to Petitioners' *Request*.

Upon careful consideration, this Court denies Petitioners' *Request* to reconsider In re Hart on the merits because those issues were previously adjudicated in that ruling or should have been raised prior to that ruling. In doing so, this Court grants the *Secretary's Motion* to dismiss reconsideration of In re Hart on the merits. However, this Court grants Petitioners' *Request* to reconsider financial hardship and, therefore, denies the *Secretary's Motion* as it relates to that matter. Thus, while Petitioners' debt remains legally enforceable and past due, the Secretary's garnishment is reduced to 5% of Petitioners' disposable pay.

FINDINGS OF FACT

In or about January 2017, Petitioners were threatened with foreclosure because their HUD-insured mortgage was in default. HUD prevented foreclosure when it advanced funds to Petitioners' lender to bring the mortgage current. Id. In exchange for that relief, on January 6, 2017, Petitioners executed a promissory note ("*Note*") for $107,000 in favor of the Secretary. The *Note* stated that the debt would become due upon full payment of the mortgage. On or about September 17, 2019, the *Note* came due when Petitioners refinanced and paid off the mortgage.

After Petitioners failed to pay off the *Note*, the Secretary notified Petitioners of her intent to garnish their wages. Petitioners appealed to this Court, acknowledging their debt but arguing that the Secretary failed to provide written notice and disputing the inclusion of additional interest and fees in the total debt. This Court then issued In re Hart, finding that: 1) in addition to the Secretary's notice, the *Note* itself provided sufficient notice and 2) HUD is required by statute and regulation to charge additional interest and fees on past due debts as well as fees incurred by the U.S. Department of Treasury in its efforts to collect the debt. Accordingly, this Court authorized the Secretary to garnish 15% of Petitioners' disposable pay.[2] On October 4, 2021, Wage Garnishment Orders were issued to Petitioners' employers.

The Secretary now states that Petitioners are indebted to HUD in the following amounts:

a) $107,000 as the unpaid principal balance;
b) $4,280.88 as the unpaid interest on the principal balance at 2% per annum through January 13, 2022;
c) $6,387.86 as the unpaid penalties as of January 13, 2022;

[2] Petitioners did not raise the issue of financial harm during In re Hart, and copies of their most recent pay statements were not submitted for the record. Accordingly, this Court set the repayment schedule at 15% of Petitioners' disposable pay to liquidate the debt in three years as recommended by the Federal Claims Collection Standards.

d) $261.40 as the unpaid administrative costs as of January 13, 2022; and
e) interest on said unpaid principal balance from January 14, 2022 at 2% per annum until paid.

Sec'y. Stat. at ¶ 8, *Dillon Decl*. at ¶ 5.

DISCUSSION

I. Petitioners Are Barred from Raising Previously Adjudicated Issues

As an initial matter, the principle of res judicata bars Petitioners from raising issues that were raised or should have been raised during In re Hart. See Allen v. McCurry, 449 U.S. 90, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980) ("Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action."). Here, res judicata applies because Petitioners contest issues, such as the legality and enforceability of the debt and whether the debt is past due, that In re Hart decided on the merits or should have been raised at that time.

Further, Petitioners' arguments lack merit. Petitioners' 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, states "[i]n return for a loan received from Lender, ***Borrower promises to pay the principal sum of [$107,000.00] to the order of Lender***," and that the debt shall come due when "***[b]orrower has paid in full all amounts due under the primary Note*** …."[3] *Note* at ¶¶ 1 and 2 (emphasis added). On September 9, 2019, the *Note* came due when Petitioners refinanced their primary debt, i.e., mortgage, thereby paying off that debt in full. Arguments that Petitioners did not liquidate any equity or transfer ownership, their reliance on the representations of third parties caused them to believe the *Note* was not due, or the Deed of Trust remains of record are insufficient and untimely raised to warrant reconsideration.[4]

Additional arguments posed by Counsel also lack merit. Counsel contends that Secretary and/or this Court prejudiced Petitioners when: 1) he and Petitioners did not receive the In re Hart decision in time to allow them to request reconsideration to prevent garnishment of Petitioners' wages; 2) the *Secretary's Statement* was not served on him; and 3) Petitioners' requests for settlement discussions overseen by a settlement judge went unaddressed. However, certificates of service show the In re Hart decision was served to Petitioners upon issuance on September 17, 2021. Further, the decision instructed Petitioners that reconsideration was available within 20 days upon a showing of good cause. In addition, the *Secretary's Statement* was available to Counsel through Petitioners. Lastly, for the above reasons, res judicata prevents referral to a settlement judge, and the Parties were not precluded from otherwise negotiating a settlement without the assistance of a mediator.

Thus, any request for reconsideration regarding the legality and enforceability of the debt is denied. In the absence of a release from HUD discharging Petitioners from the obligation to

[3] "Lender" means the Secretary of Housing and Urban Development.

[4] If Petitioners believe they were misled and may have cause of action against those parties who they believe did so, then Petitioners must pursue such a cause of action in another forum. This Court makes no ruling on that issue.

repay the debt, Petitioners remain indebted to the Secretary in the amounts set forth above. See In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at 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).

II. Petitioners Show Financial Hardship

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 terms agreeable to HUD. While Petitioners' Counsel states that he has attempted to do so, as of this date no such agreement has been executed. However, under this Court's authority, the Secretary's garnishment is reduced from 15% of Petitioners' disposable pay to 5% (see generally 24 C.F.R. § 17.81, 31 C.F.R. §§ 285.11(f)(11)(ii) and (iii)) because the 15% garnishment creates a deficit. Specifically, Petitioners' pay stubs show their combined monthly disposable pay is $13,925.60 while their financial statement lists monthly expenses totaling $12,905.61. Accordingly, a monthly garnishment of 15% (approximately $2,089) leaves a deficit of more than $1,000. Thus, Petitioners' *Request* as it relates to the financial hardship caused by the present garnishment is granted.

Petitioners have indicated a desire to negotiate a settlement. However, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. And, as this debt is being serviced by the U.S. Department of Treasury, Petitioners must contact 1-888-826-3127 should they wish to negotiate a repayment plan. Petitioners are also entitled to seek reassessment of this financial hardship determination in the future in the event they experience materially changed financial circumstances. See 31 C.F.R. § 285.11(k).

ORDER

For the reasons set forth above, this Court finds the debt that is the subject of this proceeding to be legally enforceable against Petitioners in the amount claimed by the Secretary. It is:

ORDERED that the Secretary is authorized to seek administrative wage garnishment in the amount of 5% of Petitioners' disposable pay per month, or such other amount as determined by the Secretary, not to exceed 5% of Petitioners' disposable pay per month. It is

FURTHER ORDERED that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

SO ORDERED,

ALEXANDER FERNANDEZ-PONS

Digitally signed by: ALEXANDER FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-PONS C = US O = U.S. Government OU = Department of Housing and Urban Development, Office of the Secretary
Date: 2023.10.13 10:51:28 -04'00'

Alexander Fernández-Pons
Administrative Law Judge

Finality of Decision. Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. § 701 et seq.).