

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
Michael Higginbotham,)	
)	HUDOHA No. 22-AM-0063-AG-046
)	
Petitioner.)	Claim No. 780716608
)	August 8, 2023

DECISION AND ORDER

On December 20, 2021, Michael Higginbotham, (“Petitioner”) executed and then filed a Request for Hearing (“*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 and Secretary’s Proposed Repayment Schedule*, dated February 11, 2022, (“*Sec’y. Stat.*”) attaching the *Declaration of Brian Dillon*, (“*Dillon Decl.*”), Director, Asset Recovery Division, Financial Operations Center of HUD, dated January 27, 2022, as Exhibit C 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 *Hearing Request*, Petitioner claims he does not owe the debt. However, Petitioner fails to submit evidence with his *Hearing Request* to support his position. In fact, in this Court’s January 14, 2022 *Notice of Docketing, Order, and Stay of Referral*, Petitioner was ordered to submit documentary evidence on or before February 28, 2022, proving that all or part of the alleged debt is unenforceable or not past due. Because Petitioner did not submit documentary evidence to substantiate that he does not owe the debt, the Court finds that Petitioner has failed to file any substantive evidence that the alleged debt in this case is not owed or is not legally enforceable.

BACKGROUND

On September 26, 2003, Petitioner executed a *Retail Installment Contract* (“*Note*”) with 21st Mortgage Corp. for the purchase of a Fleetwood Manufactured Home in the amount of \$23,916.00 with interest of 9.99% accruing on the unpaid balance. *Sec’y. Stat.* at ¶ 2, Exhibit A. Principal and interest payments were due monthly beginning on November 1, 2003. *Sec’y. Stat.*, Exhibit A. The *Note* was insured against nonpayment by the Secretary pursuant to the National Housing Act, 12 U.S.C. § 1703. *Sec’y. Stat.* at ¶ 2.

Petitioner failed to make the payment on the *Note* as Agreed. *Sec’y. Stat.* at ¶ 3, *Dillon Decl.* at ¶ 3. Therefore, in accordance with 24 C.F.R. § 201.54, under the Title I Insurance program, on October 19, 2009, 21st Century Mortgage Corp. assigned the *Note* to the United States of America. *Sec’y. Stat.* Exhibit B, *Dillon Decl.* at ¶ 3. Accordingly, the Secretary is the holder of the *Note* on behalf of the United States of America. *Sec’y. Stat.* at ¶ 3, *Dillon Decl.* at ¶ 3. The Secretary has attempted to collect on the *Note* from Petitioner, however, these efforts have been unsuccessful. *Sec’y. Stat.* at ¶ 4, *Dillon Decl.* at ¶ 4.

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

- (a) \$10,870.45 as the unpaid principal balance as of December 31, 2021;
- (b) \$3,560.58 as the unpaid interest on the principal balance at 1% per annum through December 31, 2021;
- (c) \$2,258.82 as the unpaid penalties and administrative costs as of December 31, 2021; and
- (d) interest on said principal balance from January 1, 2022, at 1% per annum until paid.

Sec’y. Stat. ¶ 4, *Dillon Decl.* ¶ 4.

A *Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings* (“*Notice*”) dated December 8, 2021, was sent to Petitioner as required by 31 C.F.R. § 285.11(e). *Sec’y. Stat.* at ¶ 5, *Dillon Decl.* at ¶ 5. 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. *Sec’y. Stat.* at ¶ 6, *Dillon Decl.* at ¶ 6. Petitioner did not enter into a written repayment agreement. *Sec’y. Stat.* at ¶ 6. Therefore, HUD’s proposed repayment schedule is \$468.24 per month, which HUD represents will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner’s disposable pay. *Sec’y. Stat.* at ¶ 8, *Dillon Decl.* at ¶ 7.

Of note, HUD attempted to obtain a recent pay statement from Petitioner, in order to calculate a repayment schedule based upon Petitioner’s actual income. *Sec’y. Stat.* at ¶ 8, *Dillon Decl.* at ¶ 7. However, Petitioner has not provided the requested documentation. Id.

DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. See 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. See 31 C.F.R. § 285.11(f)(8)(ii). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue hardship to Petitioner, or that the alleged debt is legally unenforceable. *Id.*

As evidence of the Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement* together with a copy of the *Note* (Exhibit A), the Assignment of the *Note* from 21st Mortgage Corp. to the Secretary (Exhibit B) and the sworn Declaration of Brian Dillon (Exhibit C). Accordingly, this Court finds that the Secretary has met her initial burden of proof.

Petitioner's obligation to repay that *Note* derives from the express language of the *Note* itself. The *Note* is signed and agreed to by Petitioner, which states under borrower's "Promise to Pay" that, "I promise to pay you the Unpaid Balance shown with interest at the rate of 9.99% per year until the debt is fully paid. I will pay this amount in 180 installments...." *Sec'y. Stat.* Exhibit A at pg. 2. "You" is defined in the agreement as the creditor. *Id.* at pg. 1. HUD is the creditor, since the *Note* was assigned from 21st Mortgage Corp. to the Secretary on October 19, 2009. *Sec'y. Stat.* Exhibit B.

In his *Hearing Request*, that he signed on December 20, 2021, Petitioner opposed the Secretary's proposed wage garnishment. Petitioner claims that he does not owe the debt. *Hearing Request*, pg. 3. Petitioner does not dispute the existence or amount of the debt incurred, or that the debt is delinquent. In fact, despite claiming that he does not owe the debt, Petitioner has provided no proof to the Secretary that he does not owe the debt. *Sec'y. Stat.* at ¶ 7, *Dillon Decl.* at ¶ 8. Also, as stated prior, this Court's January 14, 2022 *Notice of Docketing, Order, and Stay of Referral*, ordered Petitioner to submit documentary evidence on or before February 28, 2022, proving that all or part of the alleged debt is unenforceable or not past due. However, Petitioner submitted nothing to the Court to support his claim that he did not owe the debt. As a result, the Court may dismiss Petitioner's *Hearing Request*. *See* 24 C.F.R. § 26.4(d).

Furthermore, 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). Therefore, the Court finds Petitioner liable for the debt in this case in the amounts claimed by the Secretary. The Secretary may proceed against Petitioner for the full amount of the debt set forth in the *Sec'y. Stat.* at ¶ 4, and as attested to in the *Dillon Decl.* ¶ 4.

In the event that Petitioner wishes 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 15% of Petitioner's disposable income per month, or such other amount as determined by the Secretary, not to exceed 15% 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,



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.