

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

In the Matter of:

Ronald Tulotta,

Petitioner

22-VH-0071-AG-053

721018047

July 31, 2023

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing (Hearing Request)* filed on January 6, 2022 by Petitioner 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”). This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations.

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 January 10, 2022, 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 January 21, 2022, the Secretary filed his *Statement (Sec’y. Stat.)* along with documentation in support of her position. In response to the *Secretary’s Statement* Petitioner filed, on August 23, 2022, a written *Statement* indicating his willingness to settle. This case is now ripe for review.

FINDINGS OF FACT

This action is brought on behalf of the Secretary of the United States Department of Housing and Urban Development (“Secretary” or “HUD”) pursuant to 31 U.S.C. § 3720D.

In or about August 2017, the HUD-insured primary mortgage on Petitioner’s home was in default, and Petitioner was threatened with foreclosure. To prevent the lender from foreclosing, HUD advanced funds to Petitioner’s primary mortgage lender to bring the primary Note current. In exchange for foreclosure relief, Ronald Tulotta (“Petitioner”) executed and delivered to the Secretary a *Subordinate Note* (the “Note”), dated August 18, 2017, in the amount of \$88,886.35 in favor of the Secretary. (Note - Exhibit B). *Sec’y. Stat.* ¶ 4, Ex. B, *Declaration of Brian Dillon*¹ (“*Dillon Decl.*”) ¶ 4; *Sec’y. Stat.* ¶ 2, Ex. A, Note.

By terms of the Subordinate Note, the amount to be repaid thereunder becomes due and payable “[o]n August 1, 2047 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 note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary; or (iv) the property is not occupied by the purchaser as his or her principle residence.” *Sec’y. Stat.* ¶ 4, Ex. A, Note, ¶ 4(A).

On July 6, 2020, Petitioner’s primary mortgage was paid in full, and the FHA mortgage insurance was terminated, an event that caused the Note to become due. *Sec’y. Stat.* ¶ 4, Ex. A, Note, ¶ 4; Ex. B, *Dillon Decl.* ¶ 4. Accordingly, HUD has attempted to collect the amounts due under the Note, but Petitioner remains indebted to HUD. *Sec’y. Stat.* ¶ 5, Ex. B, *Dillon Decl.* ¶¶ 5-6. A Notice of Intent to Initiate Administrative Wage Garnishment Proceeding, dated October 20, 2022, was mailed to Petitioner’s last-known address at 2638 Brooke Willow Blvd, Knoxville, TN 37932 *Sec’y. Stat.* ¶ 6, Ex. B, *Dillon Decl.* ¶ 6.

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, which could have avoided issuance of a wage garnishment order to Petitioner’s employer. However, to date, Petitioner has not entered into any such agreement. *Sec’y. Stat.* ¶ 7, Ex. B, *Dillon Decl.* ¶ 7.

Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$88,886.35 as the unpaid principal balance as of December 31, 2021;
- b. \$518.28 as the unpaid interest on the principal balance at 1.0% per annum through December 31, 2021;
- c. \$5,403.23 as the unpaid penalties and administrative costs as of December 31, 2021; and
- d. interest on said principal balance from January 1, 2022, at 1.0% per annum until paid.

Sec’y. Stat. ¶ 8, Ex. B, *Dillon Decl.* ¶ 5.

¹ Brian Dillon is Director of the Asset Recovery Division of HUD’s Financial Operations Center.

HUD proposes a wage garnishment repayment schedule of \$2,633.55 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Standards. Alternatively, HUD proposes repayment in an amount equal to 15% of Petitioner's disposable income.

DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims that he owes the debt and is willing to pay in full the subject debt through a repayment plan. In what the Court deems as an offer to settle, Petitioner states:

We would like to ask one of two things please to help us not lose our home, we have 4 young daughters, and this debt came out of nowhere to us years after the fact (we would have settled it years ago). Can we agree to make a reasonable monthly payment until we can afford to make a higher offer to settle? Maybe in as little as 6 months to a year so this garnishment does not affect our credit or work pay checks, we can do direct deposit please. Give us some time for me to get healthier and back to work and we can probably make a larger offer in those same 6-12 months please. *Petitioner's Statement (Pet'r Stat.)*, dated August 23, 2022.

Herein, Petitioner has submitted this offer of repayment for consideration by the Government or by the Court for settlement of the subject debt. While Petitioner may wish to negotiate repayment terms with the Government, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may wish to discuss this matter with Counsel for the Secretary, or with the Director of HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner may also request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

Based on the foregoing, the Order imposing the stay of referral on January 10, 2022 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 of an amount equal to 15% of Petitioner's monthly 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 the written decision, and shall be granted only upon a showing of good cause.