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

In the Matter of: **Ashley J. Windsor,** Petitioner	22-VH-0123-AG-087 780751894 May 24, 2022

ORDER GRANTING DISMISSAL

NOW COMES BEFORE THIS COURT a Motion to Dismiss (Motion) with prejudice filed by the Secretary on May 23, 2022. The basis for the Motion is on the issue of legal enforceability of the subject debt.

The Secretary contends that on September 4, 2018, a *Decision and Order* was issued in In re Ashley J. Windsor, HUDOHA No. 17-AM-0201-AG-077 in which the Court upheld Petitioner's debt was past due and legally enforceable. Petitioner then "submitted a letter to the Court that the Court deemed a motion to re-open the decision issued of September 4, 2018." Citing In re Ashley J. Windsor, HUDOHA No. 19-VH-0037-AG-009 (Jan. 3, 2020), the Secretary states that the Court again found that Petitioner's debt to HUD as past due and legally enforceable, however, "the Court reduced the garnishment amount from 15% to 8%."

The Secretary now maintains that on the Hearing Request form filed on February 23, 2022 but dated March 12, 2021:

> Petitioner failed to check any box indicating the reason she is requesting a hearing. No other information was provided by Petitioner and no other claim or argument was made. To the extent Petitioner alleges in this proceeding that she owes no legally enforceable debt to HUD, Petitioner's claim is precluded by the legal principle of *res judicata*. See In re Juanita Johnson, HUDOHA No. 13-AM-0163-AG-071 (April 17, 2014) (Finding the Petitioner indebted to HUD because *res judicata* bars the same parties from relitigating claims that were previously adjudicated on the merits.) Accordingly, based on that prior decision on the merits, the instant administrative wage garnishment matter should be dismissed with prejudice.

"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." Allen v. McCurry, 4498 U.S. 90, 94 (1980); see also Marrese v. American Academy of Orthopedic Surgeons, 470 U.S. 373, 376 n.1 (1985) (stating that its [doctrine of res judicata] purpose is to

prevent "litigation of matters that should have been raised in an earlier suit"). Res judicata is a jurisprudential doctrine designed to promote the finality of judicial determinations, to conserve judicial resources, and to spare adversaries the vexation and expense of redundant litigation. See Montana v. United States, 440 U.S. 147, 153 (1979). As such, the doctrine of res judicata ensures that parties can proceed to court to resolve disputes, not to prolong them.

Upon reviewing the previous record, the Court has determined that the Hearing Request Petitioner filed on February 23, 2022 identified the same identical HUD claim number (780751894) and named parties as the previous adjudication of 2018. Petitioner was also granted another opportunity in 2020 for review of the same case based on a claim of financial hardship pursuant to 31 C.F.R. §285.11 (k).[1] The Court, upon consideration of Petitioner's hardship claim and evidence, reduced the previous garnishment rate from 15% to eight (8) percent without prejudice to the Secretary's right to recover should Petitioner's financial circumstances subsequently change.

As correctly noted by the Secretary, Petitioner did not raise the financial hardship exception on this appeal and, as a result, has no basis upon which to file another appeal before this Court regarding a matter that has already been adjudicated. In 2018, the Court held with finality that "Petitioner has not met the burden of proof that the debt was not past due or enforceable, refuting the Secretary's *prima facie* proof of the Petitioner's indebtedness. Without such evidence, the Court finds that Petitioner's claim fails for lack of proof." In re Ashley J. Windsor, HUDOHA No. 17-AM-0201-AG-077 (September 4, 2018).

Embodied in the doctrine of res judicata is "a fundamental precept" that a "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties." *Id.* (internal quotation marks omitted). In other words, "a party who once has had a *chance* to litigate a claim before an appropriate tribunal usually ought not to have another chance to do so." SBC Communications. Inc. v. FCC, 407 F.3d 1223, 1229 (D.C. Cir.2005) (quoting Restatement (Second) of Judgments at 6 (1982) (emphasis in original)). This Court also held in a previous case, In re Clarence Giles, HUDOA NO. 10-H-CH-LL20 (April 23, 2010), that the doctrine of res judicata applies when the Court has previously ruled in favor of one party in a previous case involving the same claims and parties as in the appeal before the Court.

[1] In 31 C.F.R. §285.11 (k) it provides:

"*Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(2) A debtor requesting a review under paragraph (k)(1) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. Agencies shall consider any information submitted in accordance with procedures and standards established by the agency."

Petitioner did not raise such a claim in this case, so the Court is unable to determine whether this exception applies.

Here, as in In re Clarence Giles, the Court previously ruled in favor of HUD in a case that involved the same claims and same parties present in this appeal. This Court cannot and will not extend to Petitioner another "bite at the apple" for a third time regarding the subject debt that has already been adjudicated by this Court. To do so would set an unacceptable precedent that might encourage parties to challenge, in perpetuity, the finality of previously adjudicated matters where exceptions do not apply. Such misuse of the Court's resources would prove to be unproductive and serve as an unnecessary exercise in futility.

Consistent with established case law precedent and the doctrine of res judicata, the Secretary's *Motion to Dismiss* WITH PREJUDICE is hereby **GRANTED**.

Based on the foregoing, the *Decision and Order* issued on September 4, 2018 in In re Ashley J. Windsor, HUDOHA No. 17-AM-0201-AG-077 has been decided on the merits of the case and shall remain in FULL FORCE AND EFFECT.

SO ORDERED.

Vanessa L. Hall
Administrative Judge