

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

In the Matter of:

Richard Lewis,

Petitioner

22-VH-0125-AG-089

780761182

November 1, 2023

DECISION AND ORDER

This proceeding is before the Court upon a *Request for Hearing (Hearing Request)*, filed on February 23, 2022 by Richard Lewis (“Petitioner”), concerning the existence, amount, or enforceability of the payment schedule of the debt allegedly owed to the United States 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 garnishment as a mechanism for the collection of debts owed to the United States government.

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 bears 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 March 23, 2022, this Court stayed the issuance of a wage garnishment order and ordered HUD to suspend any existing withholding order until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral (Notice of Docketing)* at 2. On May 23, 2022, the Secretary filed his *Statement (Sec’y Stat.)* along with documentation in support of her position. Petitioner filed, on November 15, 2022, documentary evidence in support of his position. This case is now ripe for review.

FINDINGS OF FACTS

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, because of a defaulted loan that was insured against non-payment by the Secretary.

The Secretary contends in her *Statement* that “on or about September 3, 2003, Richard E. Lewis (“Petitioner”) executed a *Retail Installment Contract—Security Agreement* (referred to herein as the “Note”) in the principal amount of \$48,598.50.” The Note was insured against nonpayment default by Secretary pursuant to Title I of the National Housing Act. The Petitioner defaulted on the Note by failing to make payments as agreed in the Note. The Note was subsequently assigned to HUD pursuant to the regulations governing the Title I Insurance Program.

HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$14,114.19 as the unpaid principal balance as of April 30, 2022;
- b. \$517.44 as the unpaid interest on the principal balance at 1 % per annum through April 30, 2022;
- c. \$2,421.45 as the unpaid penalties and administrative costs as of April 30, 2022, and;
- d. interest on said principal balance from May 1, 2022 at 1 % per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated January 27, 2022, was mailed to Petitioner’s last known address. 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. However, to date, Petitioner has not entered into any such agreement.

HUD’s attempt to obtain updated income documentation from Petitioner was unsuccessful. Therefore, HUD proposes a wage garnishment repayment schedule of \$475.00 per month, which will liquidate the debt in approximately three years, as recommended by the Federal Claims Collections Standards; or alternatively, an amount equal to 15% of Petitioner’s disposable income.

The Secretary requests a finding that the Petitioner's debt is past due and legally enforceable, authorized to collect the proposed repayment schedule as requested, and that the stay of referral to the Department of the Treasury for collection by Administrative Wage Garnishment be vacated.

DISCUSSION

Petitioner does not claim that the subject debt is invalid or unenforceable but instead requests that an accurate accounting of his payment history towards the subject debt be verified to ensure that the outstanding amount claimed reflects the accurate amount owed. Petitioner provides, as support, copies of the Note and Assignment of Contract. Petitioner also offers an alternative repayment plan to settle the subject debt.


First, Petitioner requests an accurate accounting of previous payments that he made towards the subject debt because he contends that if this was done, the Court would find that the balance owed “may be less than \$14,000.00 dollars.” The Note and Assignment of Contract offered by Petitioner as evidence for his position is insufficient as proof that the amount owed is less than \$14,000.00. Instead, such evidence standing alone more strongly supports the Secretary’s position that Petitioner owes the debt. Further, in the *Notice of Docketing* issued to Petitioner after he filed his appeal, Petitioner was notified that documents related to the accounting of the subject debt are not in the possession of this Court. The Court is not able to conduct an accounting of debts owed in these cases. Such inquiries should be directed instead towards the Financial Operations Center of U.S. Housing and Urban Development, not to this Court.

Next, Petitioner is requesting “to make payment arrangements on this debt if the [C]ourt sees fit in accordance with the law.” Based on Petitioner’s own admission, and the Court’s assessment of the record of evidence, Petitioner is not only responsible for the debt but is obligated to pay the subject debt in full. However, regarding Petitioner’s proposed repayment plan, 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 the Director of HUD’s Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner also may request a review of his 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 March 23, 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 in an amount equal to 15% of Petitioner’s disposable biweekly income.

SO ORDERED.


Vanessa L. Hall
Administrative 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.*).