

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

In the Matter of:

**Brian Stone,**

Petitioner

22-VH-0203-AG-131

721018066

September 21, 2023

**DECISION AND ORDER**

On August 26, 2022, Brian Stone (“Petitioner”) filed a hearing request concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“Secretary”).

**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 September 2, 2022, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On October 20, 2022, the Secretary filed her *Statement* along with documentation in support of her position. To date, Petitioner has failed to file sufficient documentary evidence in support of his claim or in compliance with the Orders issued by this Court. 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. 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.

The Secretary contends in her *Statement* that in December 2016, 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 lender through its partial claim program to bring the primary note current. In exchange for foreclosure relief, on December 6, 2016, Petitioner executed a Partial Claims Promissory Note (“Note”) in the amount of \$119,101.13 in favor of the Secretary.

Paragraph 3(A) of the Note cites specific events that render the debt due and payable. One of those events is the payment in full of the primary note. On or about July 6, 2020, the FHA insurance on Petitioner’s primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full.

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the **“U.S. Department of HUD c/o Novad Management Consulting, Shepard’s Mall, 2401 NW 23<sup>rd</sup> St., Suite 1A1, Oklahoma City, OK 73107... or any such other place as [HUD] may designate in writing by notice to Borrower.”** Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner’s debt to HUD is delinquent.

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$119,101.13 as the unpaid principal balance as of August 30, 2022;
- (b) \$1,488.15 as the unpaid interest on the principal balance at 1% per annum through August 30, 2022;
- (c) \$7,222.16 as the unpaid penalties and administrative charges on the principal balance as of August 30, 2022; and
- (d) Interest on said principal balance from September 1, 2022 at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated July 4, 2022 (“Notice”) was sent to Petitioner. 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. Petitioner has not entered into a written repayment agreement in response to the Notice. HUD attempted to obtain a recent pay statement from Petitioner to calculate a repayment schedule based on Petitioner’s actual income. To date, however, the requested documentation has not been provided.

HUD's proposed repayment schedule is \$1,000.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collections Standards or 15% of Petitioner's disposable pay. The Secretary respectfully requests that the Court find Petitioner's debt past due and legally enforceable and the Secretary's proposed repayment schedule fair.

### DISCUSSION

Petitioner contends, in his *Hearing Request*, that he does not owe the full amount of the subject debt. According to Petitioner, this debt is not currently due because he did not sell his house and because he was misled by the lender that HUD's subordinate note was paid off when the lender refinanced Petitioner's primary mortgage. Petitioner also claims that HUD should have accepted Petitioner's repayment terms because that was all he could afford. Upon default and notice to collect, Petitioner still failed to meet his payment obligations, denied owing the full amount, and thereafter failed to offer evidence to refute the Secretary's claim that the amount claimed was owed. In the absence of evidence or record of payment to date, the Court cannot reasonably assess the credibility of Petitioner's position in this case.

The Secretary's position is instead more persuasive and credible based on a review of the record. In her *Statement*, the Secretary maintains that the Petitioner "cannot now blame his current lender for his failure to know the terms of the Note that he signed." The Secretary is correct. The Note herein is considered a separate and distinct debt from the primary mortgage. See Catherine Coley, HUDOA No. 16-VH-0147-AG-039 at 3 (July 24, 2017). Petitioner was obligated to read and understand the terms of the Note before execution and therefore was responsible for repaying HUD's Note at the time he refinanced his mortgage, despite what his current lender did or did not do.

"A third party's error or negligence does not normally relieve Petitioner of liability for the debt... Petitioner's obligation to pay the debt derives from the terms of the Note." Stephond West, HUDOA No. 17-AM-0026-AG-006 (March 14, 2018), *citing* Bryan McClees, HUDOA No. 17-AM-0037-AO-010 (February 14, 2018) and Cydine A. Taylor, HUDOA No. 14-AM-0063-AO-005 (October 22, 2014); *also see*, Judith Herrera, HUDOA No. 12-M-CH-AWG27 (July 12, 2012) (the court found that a statement to Petitioner by a title company that "all was okay, and Petitioner did not owe debt" was insufficient as proof that HUD had been paid).

In this case, Petitioner signed and accepted the Note and agreed to the terms contained therein. The Note here clearly states that certain events or conditions can trigger a secured party's right to cure a default, one of which is the borrower's default on payment of any installment of the total number of installments due on the Note. *Sec'y. Stat.*, Ex. B, Note, ¶ 3(a). When Petitioner failed to pay the Note as agreed, the Note immediately became due and payable in the full amount so claimed by the Secretary. Unless otherwise proven by Petitioner that he has been released from this payment obligation, his obligation to pay remains intact. Therefore, the Court finds that Petitioner shall pay in full the subject debt.

As a final point, Rule 26.4 (d) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order

necessary to the disposition of the hearing including *a determination against a noncomplying party*. (Emphasis added).


Accordingly, pursuant to Rule 26.4(d), Petitioner's non-compliance with the Orders issued by this Court in this case also provides a separate basis for rendering a decision against Petitioner.

### **ORDER**

Based on the foregoing, the Order issued on September 2, 2022 that imposed the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is hereby **VACATED**.

The Secretary is authorized to seek 15% of Petitioner's disposable pay in satisfaction of the debt due and now enforceable.

SO ORDERED.



Vanessa L. Hall  
Administrative Judge

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**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.