

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

In the Matter of:

Rubens Jourdain,

Petitioner

Docket No. 23-VH-0105-AG-057
(Claim No. 721019515)

October 28, 2024

DECISION AND ORDER

On May 24, 2023, Rubens Jourdain (“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 May 25, 2023, 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 June 16, 2023, 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.

According to the Secretary, In December 2020, 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 January 16, 2021, Petitioner executed a Subordinate Note (“Note”) in the amount of \$12,996.15 in favor of the Secretary.

Paragraph 4(A)(i) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. On or about January 5, 2022, 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 in accordance with the Note, ¶ 4(A)(i) & (iii)). Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the “Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 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) \$12,710.92 as the unpaid principal balance as of May 31, 2023,
- (b) \$21.18 as the unpaid interest on the principal balance at 1% per annum through May 31, 2023; and
- (c) Interest on said principal balance from June 1, 2023, at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated May 3, 2023 (“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.

HUD attempted to obtain a recent pay statement from Petitioner in order to calculate a repayment schedule based on Petitioner’s actual income. To date, however, the requested documentation has not been provided. Therefore, HUD’s proposed repayment schedule is \$353.67 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards or 15% of Petitioner’s disposable pay. Petitioner has not entered into a written repayment agreement in response to the Notice.

Based on the foregoing, the Secretary is requesting that this Tribunal find Petitioner's debt past due and legally enforceable and the Secretary's proposed repayment schedule fair.

DISCUSSION

Petitioner does not dispute the amount of the subject debt. Instead, Petitioner claims that this debt does not exist because it was already paid in full by PHH Mortgage on Petitioner's behalf. More specifically, Petitioner maintains, "My loan from PHI-I [sic] Mortgage (account number: 8014831047) was paid off on December 2021 and the title was released." Along with his *Hearing Request*, Petitioner offers as evidence a copy of email communication between him and the primary lender regarding payment of a debt owed but, on its face, there is no language that supports payment of the subject debt.

Based on a review of the evidence presented, this Tribunal has determined that Petitioner has not met his burden of proof regarding whether the subject debt is nonexistent or unenforceable. The Secretary's right to collect the subject debt in this case emanates from the terms of the Note, not from email communication between Petitioner and the primary lender. See Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the full amount of the debt, there must be either a release in writing directly from HUD that explicitly relieves Petitioner's obligation to HUD under the Subordinate Note, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986).

The evidence presented by Petitioner fails to prove existence of a written release or valuable consideration exchanged. As a general practice, the onus falls on Petitioner to produce such evidence but, the emails presented by him provides language that only supports a written release from the primary mortgage with PHH Mortgage, not a release from the Subordinate Note with HUD. Because neither release nor consideration has occurred in this case, this Tribunal must find Petitioner's claim fails for lack of proof and thus Petitioner remains responsible for the payment of the existing debt.

ORDER

Based on the foregoing, this Tribunal finds that the debt that is the subject of this proceeding does exist and is enforceable in the amount claimed by the Secretary.

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury on May 25, 2023 for collection of the subject debt by means of administrative wage garnishment is 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

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.*).