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

In the Matter of: SCOTT WASSAM, Petitioner.	24-VH-0009-AG-005 (Claim No. 721019195) December 5, 2024

DECISION AND ORDER

On October 20, 2023, Scott Wassam ("Petitioner") filed a *Hearing Request* seeking a hearing concerning the amount, enforceability, or payment schedule of a 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 Secretary of HUD has designated the judges of this Office of Hearings and Appeals ("Tribunal") to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth in 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

APPLICABLE LAW

The agency 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, a petitioner may show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. Id. § 285.11(f)(8)(ii). In addition, a petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, that the repayment schedule would cause an undue financial hardship to the petitioner, or that collection of the debt may not be pursued due to operation of law. Id.

PROCEDURAL HISTORY

Petitioner filed a *Hearing Request* with evidence in support of Petitioner's position. The Tribunal thereafter issued a *Notice of Docketing, Order, and Stay of Referral* (*Notice*) in which the wage withholding order was stayed until the issuance of this *Decision and Order*. On November 8, 2023, HUD filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable and Proposed Repayment Schedule* along with evidence of Petitioner's indebtedness.

To date, Petitioner has failed to respond to the *Notice* and subsequent *Order to Show Cause* issued by this Tribunal on October 25, 2023 and January 22, 2024, respectively. This case is now ripe for review.

FINDINGS OF FACT

Petitioner executed a Partial Claims Promissory Note ("Note"), dated July 21, 2021, in favor of HUD in the principal amount of $23,845.12. In exchange for the Note, HUD advanced funds to Petitioner's primary mortgage lender as a means of providing foreclosure relief to Petitioner.

According to the Secretary, by the terms of the Note the subject debt becomes due when the primary note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary. On or about December 3, 2021, the Note became due when the Federal Housing Administration ("FHA") insurance on Petitioner's primary mortgage was terminated, as the lender indicated that the mortgage was paid in full. Once the Note became due, Petitioner was to make payment on the Note to HUD.

Petitioner failed to make payment on the Note. The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Accordingly, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

i. $23,845.12 as the unpaid principal balance as of September 30, 2023;
ii. $140.23 as the unpaid interest on the principal balance at 1% per annum;
iii. $0.00 as the unpaid penalties and administrative costs on the balance through September 30, 2023; and
iv. Interest on said principal balance from September 30, 2023, at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated April 11, 2023, was sent to Petitioner. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. Petitioner has not entered into a written repayment agreement with HUD.

The Secretary proposes a wage garnishment of $87.75 per pay period,[1] or an amount equal to 15% of Petitioner's disposable income. The Secretary in addition requests that this Tribunal find Petitioner's debt past due and legally enforceable and the Secretary's proposed repayment schedule fair.

[1] Petitioner's wages have already been garnished 17 times for a total of $2,123.50. Petitioner was last garnished in the amount of $87.75.

DISCUSSION

Petitioner argues that he does not owe the subject debt. As support, Petitioner offers into evidence copies of documents from the Colorado Housing and Finance Authority ("CHFA") in which CHFA claims that Petitioner's FHA-insured mortgage was paid in full, at least according to Petitioner.

Upon review, the record reflects full payment of the primary mortgage only, not full payment of the subject debt. CHFA's claim otherwise carries no weight in this proceeding. In this case, "[a] third party's statement is insufficient as proof that the subject debt was paid," especially when the third party is not a party to the Note. See *In re* Anna Bolton, HUDOHA No. 23-VH-0146-AG-077 (Sept. 13, 2024); see also *In re* Judith Herrera, HUDOA No. 12-M-CH-AWG27 (July 12, 2012) (finding 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).

Moreover, the Secretary's right to collect the subject debt emanates from the terms of the Note, as agreed between Petitioner and HUD and not as communicated between Petitioner and CHFA, who was not a party to the Note. See *In re* Bruce R. Smith, HUDOA 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 Note, "or valuable consideration accepted by the lender" indicating intent to release. See, e.g., *In re* Cecil F. and Lucille Overby, HUDOA No. 87-1917-G250 (Dec. 22, 1986); *In re* John Tipton, HUDOHA No. 23-VH-0153-AO-083 (Sept. 12, 2024). To date, Petitioner has failed to meet the burden of proof required by failing to offer evidence of a written release or exchange of valuable consideration. The Tribunal therefore finds Petitioner's claim fails for lack of proof, and further finds that the subject debt remains enforceable against Petitioner.

If Petitioner experiences materially changed financial circumstances in the future, he is entitled to seek reassessment of the repayment schedule. 31 C.F.R. § 285.11(k).[2] However, should Petitioner wish to negotiate repayment terms with HUD, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD.[3]

ORDER

Based on the foregoing, the Tribunal finds the subject debt to be legally enforceable against Petitioner in the amount so claimed by the Secretary. It is hereby

ORDERED that the Secretary is authorized to seek 15% of Petitioner's disposable pay by administrative wage garnishment in satisfaction of the debt due. It is

[2] Nothing in this *Decision and Order* precludes Petitioner from independently seeking reimbursement from a third party.

[3] The U.S. Department of the Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached by contacting HUD Counsel assigned to this matter.

FURTHER ORDERED that the *Notice of Docketing, Order, and Stay of Referral* imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

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.*).