

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

In the Matter of:

Abimbola Fowokan ,

Petitioner.

19-AM-0031-AG-005

721013416

January 13, 2023

RULING AND ORDER DENYING MOTION FOR RECONSIDERATION

On January 13, 2022, Petitioner was found liable to the Department for the amounts claimed by the Secretary in Claim No. 721013416. *Decision and Order*, 19-AM-0031-AG-005, dated January 13, 2022. Petitioner timely filed a *Motion for Reconsideration* in response to the *Decision and Order* (“*Decision*”). See, *Petitioner’s Motion for Reconsideration* (“*Reconsideration*”), dated February 2, 2022. The Secretary filed the *Secretary’s Third Statement in Opposition to Petitioner’s Motion for Reconsideration* (“*Opposition*”) on June 16, 2022.

The Court notified Petitioner of the right to seek reconsideration of the *Decision*, and that such motion “shall be granted only upon a showing of good cause.” *Id*, at 7.

The Secretary argues that *Petitioner’s Motion for Reconsideration* should be denied because “1) it fails to state any good cause or claims for which the relief sought should be granted; and 2) it fails to rely upon facts or documentary evidence not already considered by the Court.” *Opposition*, at 1.

Petitioner’s Claims

The *Reconsideration* sets forth eight primary claims arguing that Petitioner’s debt to the Department is unenforceable. They are that:

1. The Amount Treasury Seeks to Collect Is Not an Accurate Reflection of Petitioner’s Outstanding Debt. *Id*, at 4.
2. There Was a Mistake of Fact Between Parties Contracting to the Loan Modification Agreements. *Id*, at 5.
3. Petitioner Exhibited Conduct That Demonstrated A Materially Different Understanding Between Parties. *Id*, at 6.
4. There is No Contract for HUD to Collect on, as Petitioner and Bank of America Lacked a Meeting of the Minds at the Time of Contract Formation. *Id*, at 7.

5. Petitioner Reasonably Relied on False Representations Regarding the Terms of his Loans Made by his Loan Modification Representative to his Detriment. *Id.*, at 8.
6. Petitioner Seeks to Highlight Evidence That Was Previously in the Record With Relevant Context Behind the Filings. *Id.*, at 9.
7. Petitioner Intends to Supplement the Record to Enrich[] This Court’s Ability to Weight Relevant Evidence. *Id.*, at 10.
8. HUD’s Proposed Repayment Schedule Causes Petitioner Further Financial Hardship. *Id.*, at 10.

The January 13, 2022 Decision

The Court finds that Petitioner’s claims 1 – 5 above were specifically raised, considered, and decided in the *January 13th Decision*. Specifically, the Court held with respect to Petitioner’s Claim 1 above that:

The Notice of Intent to Initiate Administrative Wage Garnishment Proceedings sent to Petitioner by the U.S. Department of the Treasury (“Treasury”) on October 10, 2018, lists the amount of the debt as \$106,328.85.¹ Petitioner states he disagrees with Treasury’s assessment “that penalties and interest would increase the original indebtedness from \$76,872.27 to \$106,328.85.” (*See Petr. ’s Stat.*, ¶ 14). However, Petitioner’s dispute in this regard is with Treasury, not HUD. Treasury is not a party to this proceeding. The instant Decision addresses only whether a debt exists in the amount claimed by HUD and whether HUD is authorized to recoup the debt through administrative wage garnishment. *See* 31 U.S.C. § 3720D(a), (b)(5) (delineating hearing official’s jurisdiction in administrative wage garnishment matters). The HUD Secretary claims that Petitioner owes HUD a debt in the amount of \$76,872.27. The evidence supports this claim.

Id., at 5.

With respect to Petitioner’s claims 2 – 5, the Court held that:

“Petitioner alleges he does not owe a debt in the full amount claimed by HUD because, in 2014, he “agreed to a Loan Modification which **modified** the existing 2012 Partial Claim with the amount set forth in the 2014 Partial Claim (\$23,804.24).” (*Petr. ’s Stat.*, ¶ 13 (emphasis in original).) Thus, Petitioner acknowledges he owes a \$23,804.24 debt under the 2014 Note, but claims he does not owe any additional amounts under the 2012 Note

¹ This figure apparently represents the amount of the debt owed to HUD, plus the fees that Treasury would charge if the full amount were collected. When a nontax debt has been delinquent for more than 180 days, HUD is required to transfer it to Treasury for centralized collection efforts under most circumstances. *See* 31 U.S.C. § 3711(g). Treasury is authorized to charge collection fees on such transferred debts pursuant to 31 U.S.C. § 3711(g)(6). *See also id.* § 3717 (authorizing penalties and interest).

because the earlier debt was “modified and supplanted” by the later.²
(*See Petr. ’s Stat.*, ¶¶ 6-11.)

Petitioner’s argument lacks merit. On two separate occasions, in 2012 and 2014, Petitioner was threatened with foreclosure of his primary mortgage and requested modification of the terms of the loan by the primary lender. (*See Petr. ’s Stat.*, ¶ 1; *Sec’y Stat.*, ¶ 2). Each time, HUD advanced funds to the primary lender as a means of providing foreclosure relief. In other words, HUD paid two distinct partial insurance claims under 12 U.S.C. § 1715u(b), and each time, Petitioner signed a separate subordinate note promising to repay HUD. (*See Sec’y Stat.*, ¶ 2; *Sec’y. Stat.*, Exs. 1 & 2). Thus, Petitioner incurred two separate debts.”

January 13th Decision, at 3. The Court further held that:

“[E]ven if Petitioner had established fault on the lender’s part, a misrepresentation or mistake by a third party would not relieve Petitioner of his contractual obligation to HUD under the Notes.

For Petitioner not to be held liable for the full amount of the debt, Petitioner must produce either a release in writing explicitly relieving his obligation under the terms of the Notes or proof of “valuable consideration accepted” that indicates HUD’s intent to release. *See Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). In this case, Petitioner has failed to introduce into evidence proof of a written release, directly from HUD, that effectively discharged Petitioner from the debt associated with the Notes. Petitioner has also failed to introduce evidence demonstrating that the Notes in favor of HUD were ever repaid. Because Petitioner agreed in the Notes to pay the subject debt, the onus falls on Petitioner to ensure that the subject debt was satisfied. Hence, the Court finds that Petitioner’s claims fail for lack of proof. The evidence establishes that Petitioner owes HUD a past-due, legally enforceable debt in the amount of \$76,872.27.

Id., at 5.

With respect to Petitioner’s eighth claim above, the Court finds that Petitioner has not provided proof of payment of necessary household expenses and proof of income to support Petitioner’s claim of financial hardship.

Petitioner’s sixth and seventh claims above are in the nature of aspirations to supplement the evidentiary record in this case, but do not otherwise present new documentary evidence that

² In his *Hearing Request*, Petitioner also argued that “the amount of the debt violates federal laws relating to the aggregate amount of such debts, including HUD and FHA statutes.” However, Petitioner did not explain the factual basis for this allegation or identify any particular federal laws or statutes he believed had been violated, and he did not pursue this argument in his later position statement. Accordingly, this argument is rejected as unsupported. Similarly, Petitioner’s *Hearing Request* argued that the Notes were not properly recorded with state land records, but Petitioner has provided no factual or legal support for this argument, which is therefore rejected.

could not have been presented prior to January 13, 2022 when the *Decision* was rendered in this case. For the foregoing reasons, the Court finds that *Petitioner's Motion for Reconsideration* merely reasserts arguments and evidence that were or could have been presented below. *Petitioner's Motion for Reconsideration* does not demonstrate good cause to disturb the *January 13, 2022 Decision* in this matter, and the motion is therefore DENIED.

SO ORDERED,



H. Alexander Manuel
Administrative Judge