

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS  
Washington, D.C.

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In the Matter of:

**ALBERTO C. HERRERA,**

Petitioner.

)  
) Judge H. Alexander Manuel  
)  
) HUDOHA No. 21-AM-0015-AG-011  
)  
) Claim No. 721016538  
) April 11, 2023

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**DECISION AND ORDER**

On or about October 23, 2020, Alberto C. Herrera, (“Petitioner”) filed a Request for Hearing concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the U.S. 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 garnishments as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the administrative judges of this Office of Hearings and Appeals 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 at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

**BACKGROUND**

On or before June 14, 2013, Petitioner became delinquent on Petitioner’s mortgage payments with his primary lender. Petitioner’s primary mortgage was insured by HUD mortgage insurance. *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable* (“*Sec’y. Stat.*”), ¶ 2, Exhibit 1, Subordinate Note Secured by Deed of Trust (“the Note”); and *Declaration of Brian Dillon* (“*Dillon Decl.*”), Exhibit 2, at ¶ 4. Petitioner executed the Note in the amount of \$12,080.12 in favor of the U.S. Department of Housing and Urban Development. *Id.* The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. *Sec’y. Stat.*, ¶ 4; *Dillon Decl.* at ¶ 4.

The Secretary maintains that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$12,080.12 as the unpaid principal balance as of October 30, 2020;

- (b) \$201.40 as the unpaid interest on the principal balance at 2% per annum through October 30, 2020;
- (c) \$462.76 as the unpaid penalties and administrative costs as of October 30, 2020; and
- (d) Interest on said principal balance from November 1, 2020 at 2% per annum until paid.

*Id.*, ¶ 5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated August 20, 2020 ("Notice") was sent to Petitioner. *Id.*, at ¶ 6. 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 did not enter into a written repayment agreement in response to the Notice. *Id.*, at ¶ 7. The Secretary further states that Petitioner has failed to file documentary evidence to prove that he is not indebted to the Department in the amounts claimed by the Secretary. *Sec'y. Stat.*, ¶ 10.

Petitioner's obligation to repay the Note derives from the terms of the Note itself. The express language of the Note, signed and agreed to by Petitioner, states under "Borrower's Promise to Pay" that, "In return for a *loan* that I have received, I *promise to pay* \$12,080.12...to the order of the Lender." "Lender" is defined as Secretary of Housing and Urban Development. Note, at ¶ 1 (emphasis added).

The Court finds this to be sufficient proof that Petitioner was aware of the terms of the Note. Indeed, Petitioner provides no proof to offset the Secretary's proof that the proceeds of the Note were paid to Petitioner. When Petitioner executed the Note, Petitioner was put on notice that the terms of the loan from HUD required repayment.

Despite multiple Orders from this Court, Petitioner has presented no evidence that HUD's Note was paid in full or that HUD has released Petitioner from liability under the Note. *Notice of Docketing, Order, and Stay of Referral*, dated October 27, 2020; *Order to Show Cause*, dated November 29, 2022.

In the absence of a release from HUD discharging Petitioner from the obligation to repay the debt, Petitioner remains indebted to the Secretary in the amounts set forth above. See In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at p. 3 (December 8, 2008) ("... [F]or Petitioner not to be held liable for the debt, there must either be a release in writing from the lender...or valuable consideration accepted by the lender from Petitioner....")(citations omitted).

This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or enforceable." (See *Michael R. Bridges*, HUDOA No. 13-AM-0125-AG-054 (August 13, 2013); *Eric and Eliza Rodriguez*, HUDOA No. 13-AM-0061-AG-023 (April 17, 2013)(citing *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005); *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). See also *Judith Herrera*, HUDOA No. 12-M-CH-AWG27 (July 12, 2012)(wherein this Court

found that a statement to Petitioner by a title company that “all was okay and Petitioner did not owe the debt” was insufficient evidence to prove that HUD had been paid).

Therefore, the Court finds Petitioner liable for the debt in this case in the amounts claimed by the Secretary.

Petitioner has also failed to file proof of income statements or other documentary evidence to prove that undue financial hardship would be created by imposition of a repayment schedule at this time. Thus, the Court finds that undue financial hardship would not result from imposition of a repayment schedule at this time.

The Court therefore authorizes repayment at the amount of 15% of Petitioner’s disposable pay, or the maximum amount authorized by law. This Court has authority to mitigate payments in determining whether financial hardship would be imposed in particular cases, but the Court does not have the authority to establish “a debtor’s repayment amount or a schedule of payments.”

As such, while Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend or accept any payment plan or settlement offer on behalf of the Department. If Petitioner wishes to discuss a payment plan, Petitioner may discuss the matter with Michael DeMarco the Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859 or write to HUD Financial Operation Center, 50 Corporate Circle, Albany, NY 12203-5121. Petitioner is also entitled to seek reassessment of this financial hardship determination in the future in the event that he experiences materially-changed financial circumstances. *See* 31 C.F.R. §285.11(k).

### **ORDER**

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

It is hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15% of Petitioner's disposable pay for each pay period.

**SO ORDERED,**



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H. Alexander Manuel  
Administrative Judge

**APPEAL NOTICE:** You have the right to move for reconsideration of this case before the HUD Office of Hearings and Appeals within 20 days of the date of this ruling or decision; or, thereafter, to reopen this case. Ordinarily, such motions will not be granted absent a demonstration by the movant that there is substantial new evidence to be presented that could not have been presented previously. An appeal may also be taken of this decision to the appropriate United States District Court. For wage garnishments cases, See 24 C.F.R. § 17.81, 31 C.F.R. § 285.119f), and 5 U.S.C. 701, et seq. For administrative offset cases, See 24 C.F.R. § 17.73(a), and 5 U.S.C. § 701, et seq.