

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

In the Matter of

DALTON LEE,

Petitioner,

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21-AM-0091-AG-052

Claim No. 5514456

May 16, 2023

DECISION AND ORDER

On March 15, 2021, Dalton Lee, (“Petitioner”) filed a Request of Hearing concerning the amount and enforceability of an alleged debt 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 utilize administrative wage garnishment as a mechanism for the collection of debts 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 allegedly owed to the Department. 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(b).

BACKGROUND

On September 15, 1992, Petitioner entered into a Retail Installment Contract (“Note”) in the amount of \$18,939.00 with Westside Auto & Mobile Home Sales for the purpose of purchasing a mobile home. The Note was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable and Secretary’s Proposed Repayment Schedule*, dated April 9, 2021 (“*Secretary’s Statement*” or “*Sec’y Stat*”), ¶ 2; Note - Exh. A. The Note was contemporaneously assigned to Logan-Laws Financial Corporation (“Logan-Laws”). *Sec’y Stat*, Exh. A – Note, at 2 – 3. The Note was later assigned from Logan-Laws to the Government National Mortgage Association (“Ginnie Mae”), a division of the U.S. Department of Housing and Urban Development. Ownership of the Note at issue in this case is not in dispute. The Court therefore, finds that HUD is the rightful owner of the Note, and is entitled to enforce the terms of the Note. *Sec’y Stat*, Exh. B, *Declaration of Rene Mondonedo*, Director of the Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association, (“*Mondonedo Decl.*”) ¶¶ 1 – 5.

Under the Note's terms, Petitioner was to pay the principal amount of the unpaid balance until the Note was paid in full. (*See Sec'y Stat*, Exh. A ¶ 1). The Note cited specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable – one of which was when Petitioner defaulted on the terms of repayment of the Note. (*See Sec'y Stat*, ¶ 7; Exh. A ¶ 3). HUD made its demand upon Petitioner to pay the amounts owed, but Petitioner failed to do so. (*See Sec'y Stat*, ¶ 7; Exh. B, *Mondonedo Decl.* ¶ 6). As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$13,357.39 as the unpaid principal balance;
- b) \$1,014.38 as the unpaid interest on the principal balance through March 18, 2021;
- c) \$0 in administrative fees;
- d) \$72.46 in Assessed Penalty Fee; and
- e) 2 % interest on said principal balance until paid;

(*See Sec'y Stat*, ¶ 7; Exh. B, *Mondonedo Decl.*, ¶ 6)

The Secretary states that Petitioner has also failed to provide HUD with a current pay stub. (*See Sec'y Stat.*, ¶ 18; Exh. A, *Dillion Decl.*, ¶ 9). As a result, the Secretary proposes a monthly repayment of \$4,115.35 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. (*See Sec'y Stat.*, Exh. A, ¶ 8). (*See* 31 C.F.R. § 285.11(i)(2)(i)(A)).

On February 11, 2021, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") was sent to Petitioner. (*See Sec'y Stat*, ¶ 8; Exh. B, *Mondonedo Decl.*, ¶ 7). Under 31 C.F.R § 285.11(e)(2)(iii), Petitioner was given the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. (*See Sec'y Stat*, ¶ 9; Exh. B, *Mondonedo Decl.*, ¶ 8). Petitioner has not entered into a written repayment agreement in response to the Notice. (*See Sec'y Stat*, ¶ 8).

In his *Hearing Request*, dated March 12, 2021, and in his email, dated April 27, 2021, Petitioner provides little, if any, documentary evidence to prove that the debt owed to HUD under the terms of the Note was repaid. Petitioner states that:

"...[he] is just now this year February 28, 2021 finding out about this so called debt. Mind you that the title was sent to me in 2010! The last time any transaction was done that dealt with said Mobile Home is in 2009, my full Federal tax refund was offset. At the time I did not know what the offset was but later found out, but again there was no reference to either Ginnie Mae nor the U.S. Department of Housing and Urban Development."

Petitioner's Email, dated April 27, 2021. Petitioner goes on to state that “once you receive a title for something in the State of North Carolina you assume that all debt is paid because of the Lien Holder signing off on the said title!” *Id.* Petitioner also disagrees with the “all the unpaid interest, administrative fees, penal[ties] and Debt Management Service fees, etc.” *Id.* Finally, Petitioner requests that the debt be reduced significantly so as not to cause him financial hardship.

DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. (See 31 C.F.R. § 285.11(f)(8)(i)). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. (See 31 C.F.R. § 285.11(f)(8)(ii)). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause undue hardship to Petitioner, or that the alleged debt is legally unenforceable. *Id.*

As evidence of the Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement (Sec'y Stat)* along with the sworn declaration by Rene Mondonedo, Director of the Mortgage-backed Securities Division of Ginnie Mae; and a copy of the Note. Accordingly, the Court finds that the Secretary has met the initial burden of proof.

Petitioner's arguments in response to the Secretary's evidence are insufficient to overcome the weight of the Secretary's actual proof. The Court recognizes Petitioner's “belief” that he does not owe the debt based on his failure to understand why his federal tax payments were subject to offset by the federal government in 2009. But Petitioner's mere beliefs cannot be given evidentiary value in light of the Secretary's proof. Petitioner does not deny that he signed the Note in 1992, and that he received the benefit of his mobile home as a result. Petitioner has also not come forward with any documentation showing that he repaid the Note in full. The Note provides proof that Petitioner was aware of the debt, and the *Mondonedo Decl.* provides proof that the debt has not been repaid, irrespective of when Petitioner was given title to the mobile home. Petitioner was also allowed to file documents to prove that imposition of a repayment schedule at this time would cause undue financial hardship for Petitioner. But Petitioner has failed to come forward with these documents as well.

Petitioner has also not provided any documentary evidence that he relied upon written statements made by HUD officials that his debt was satisfied and/or that the terms of his divorce agreement with his former wife were binding on HUD in this case. Petitioner's unsupported assertion that his former wife is responsible for the debt, or a portion of the debt, is insufficient evidence to establish that HUD may not enforce the Note against him. (See *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009)).

Petitioner has also not provided evidence of any written release from HUD of his obligation to repay the Note. For the debt to be extinguished, HUD must provide a written release that specifically discharges the debtor's obligation, for valuable consideration accepted

by the lender from the debtor, which would indicate intent to release. (*See Franklin Harper*, HUDBCA No. 04-D-CH-AWG41 (March 23, 2005); *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); *Cecil F. & Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); *Jesus E. & Rita de los Santos*, HUDBCA No. 86-1255-F262) (February 28, 1986)). Petitioner has provided no evidence that he received a written release from HUD, and HUD maintains that it never issued or authorized the issuance of any instrument or document to cancel, satisfy or release HUD's Note. (*See Sec'y Stat.*, ¶ 8).

The assertion that Petitioner is not responsible for the debt when HUD has not released him is without merit. Petitioner provides no legal authority or language in the Note that suggests that HUD is bound by his divorce agreement. HUD, as a third-party creditor, is not bound by a settlement, divorce decree, or other debt transfer agreement between parties when HUD is not a party to the instrument or arrangement. (*See Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003) (citing *Wendy Kath*, HUDBCA No. 89-4518-L8, at 2)). Therefore, I find that, because HUD did not agree to this transfer of its debt obligation between Petitioner and his former wife, HUD's interest is unaffected and Petitioner remains indebted to HUD, notwithstanding his divorce agreement.

Petitioner has failed to submit any documentary evidence to prove that he is not indebted to HUD. I therefore find that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

DETERMINING REPAYMENT

Petitioner has failed to come forward with documentary evidence, such as his paystub or itemized receipts for essential household expenses, to establish that repayment of this debt would create undue financial hardship. In the absence of documentary evidence, this Court determines that the proposed garnishment would not create undue hardship for the Petitioner. Therefore, I find that the Secretary is entitled to enforce the debt in the amount of 15% of Petitioner's disposable income.

Petitioner should be aware that he is entitled to seek reassessment of this financial hardship determination in the event that he experiences materially changed financial circumstances. (*See* 31 C.F.R. §285.11(k)). If Petitioner seeks to negotiate a repayment schedule with HUD, he should be aware that this Court only has the authority to find financial hardship, and to make a "determination of whether the debt is enforceable and past due." (*See Edgar Joyner Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005)). This Court does not have the authority to establish "a debtor's repayment amount or a schedule of payments." *Id.* As such, while Petitioner may wish to negotiate repayment terms with the Secretary, this Court is not authorized to "extend, recommend or accept any payment plan or settlement offer on behalf of the Department." *Id.* If Petitioner wishes to discuss a payment plan, Petitioner may discuss the matter with Michael DeMarco, Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859, or write to HUD Financial Operation Center, at 50 Corporate Circle, Albany, NY 12203-5121.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is:

ORDERED that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. The Secretary is authorized to seek administrative wage garnishment in the amount of 15% of Petitioner's disposable income per month, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable income per month.

SO ORDERED,



H. Alexander Manuel
Administrative Judge