

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

In the Matter of:

**DWAYNE SUMTER,**

Petitioner.

21-AM-0212-AG-121

Claim No. 5526443 LL 9244

August 24, 2023

**DECISION AND ORDER**

On or about July 22, 2021, Dwayne Sumter, (“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 about February 13, 1993, Petitioner executed and delivered a Retail Installment Contract – Security Agreement (“Note”) to his primary lender, Highland Home Brokers, Inc. (“Highland”). (*See Secretary's Statement*, (“*Sec’y Stat.*”), ¶ 2; Exh. B, Declaration of Rene Mondonedo, Director of the Mortgage-Backed Securities Monitoring Division of Ginnie Mae (“Mondonedo Decl.”), ¶ 3). The Note was then assigned to Logan-Laws Financial Corporation. Pursuant to a Guaranty Agreement between Logan-Laws and the Government National Mortgage Association (“Ginnie Mae” “HUD” or “the Secretary”), the Note was assigned to Ginnie Mae. (*See Sec’y Stat.*, ¶ 3; Exh 2, Mondonedo Decl., ¶ 4). Under the terms of the Note, Petitioner was to pay the principal amount of the unpaid balance on the Note until it was paid in full. (*See Exh. A, Note*).

Subsequently, Logan-Laws was defaulted as an insurer of mortgage-backed securities due to its failure to comply with Ginnie Mae requirements. (*See Sec’y Stat.*, ¶ 4; Exh. 2 Mondonedo Decl., ¶ 4). Thereafter, HUD attempted to collect the amounts owed from

Petitioner, but Petitioner failed to pay. (*Sec'y Stat.*, ¶ 7; Exh. 2, Mondonedo Decl., ¶ 6). As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$6,855.65 as the unpaid principal balance;
- b) \$6,411.85 as the unpaid interest on the principal balance through August 5, 2021;
- c) \$ 316.62 in administrative fees; and
- d) \$1,945.13 in Assessed Penalty Fees; and
- e) 2% interest on said principal balance until paid.

(*Sec'y Stat.*, ¶ 7; Exh. 2, Mondonedo Decl., ¶ 6).

On or about June 2, 2021, a Notice of Intent to Initiate Wage Garnishment Proceedings ("Notice") was mailed to Petitioner. (*See Sec'y Stat.*, ¶ 8; Exh. B, Mondonedo Decl., ¶ 7). Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was given an opportunity to enter into a written repayment agreement under terms acceptable to HUD, which he has not done. (*See Sec'y Stat.*, ¶ 6; Exh. B, Mondonedo Decl., ¶¶ 7-8). Petitioner has not provided HUD with a copy of his most recent pay statement or other documentation of his income. (*See Sec'y Stat.*, ¶ 8). As a result, the Secretary proposes a repayment schedule of 15% of the Petitioner's disposable income. (*See Sec'y Stat.*, ¶ 9).

### 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 financial hardship to Petitioner, or that the alleged debt is legally unenforceable. *Id.*

As evidence of Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement*, together with a copy of the Note (Exh. A, Note) and the sworn Declaration of Rene Mondonedo, Director of the Mortgage-Backed Securities Monitoring Division of Ginnie Mae (Exh B, Mondonedo Decl.). Accordingly, the Court finds that the Secretary has met her initial burden of proof.

In his *Request for Hearing*, Petitioner has filed little to no documentary evidence to prove that he has repaid the alleged debt. *Id.* Petitioner has also failed to file documentary evidence to substantiate any claim of financial hardship that might be encountered by repayment of the alleged debt in this case. (*See Request for Hearing*).

Petitioner's mere assertions that he is not responsible for the debt are 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)). Moreover, Petitioner has not proven that he has repaid the Note in full.

Petitioner also has not provided evidence of any release from HUD of his obligation to repay the Note. (*See Sec'y Stat.*, ¶ 8). 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)). HUD asserts that it never issued or authorized a release of Petitioner's Note and Petitioner has provided no evidence that he received a release from HUD. (*See Sec'y Stat.*, ¶ 8).

The idea that the 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 or Settlement Statement that suggests that the Note was paid or that he is not responsible for repayment of the Note. (*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, in the absence of documentary evidence showing that the Note was paid or that HUD released the debt obligation, the Note is due and enforceable, and Petitioner remains indebted to HUD in the amounts claimed by the Secretary.

In appropriate cases, this Court has the discretion to modify the Secretary's proposed repayment schedule where there is a *bona fide* showing of financial hardship. 31 C.F.R. §285.11(e)(8)(ii). However, we have been reluctant to exercise this discretion in cases where there is insufficient documentary evidence to prove financial hardship. On May 3, 2022, this Court ordered Petitioner to file documentary evidence showing that the imposition of a repayment schedule would create undue financial hardship. (*See Order for Documentary Evidence*, filed May 3, 2022). Petitioner failed to comply with that *Order*. In the absence of documentary evidence showing Petitioner's monthly income and expenses, this Court cannot determine that Petitioner will experience financial hardship. Therefore, I find that the proposed repayment amount of 15% of Petitioner's disposable pay would not create undue financial hardship for Petitioner at this time. I find that a 15% garnishment would allow for repayment of the debt without causing undue hardship.

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 the HUD, he should be aware that this Court only has the authority 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 Department, 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, the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative wage garnishment, previously issued in this case, 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 unless you can demonstrate that you have new evidence to present that could not have been previously presented. You may also appeal 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.*