

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

In the Matter of:

**Ronald Gibbs,**

Petitioner

21-VH-0020-AG-014

721016545

February 11, 2022

**DECISION AND ORDER**

This proceeding is before the Court upon a *Request for Hearing (Hearing Request)* filed on November 4, 2020, by Ronald Gibbs (“Petitioner”) concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations.

**JURISDICTION**

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. The Secretary 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, Petitioner must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.*

**PROCEDURAL HISTORY**

Pursuant to 31 C.F.R. § 285.11(f)(4), on November 5, 2020, this Court stayed the issuance of a wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”) at 2. On January 11, 2021, the Secretary filed his *Statement (Sec’y. Stat.)* along with documentation in support of her position. In response to the *Secretary’s Statement*, Petitioner filed a written *Statement* along with documentary evidence in support of her position on May 6, 2021. This case is now ripe for review.

## **FINDINGS OF FACT**

This debt resulted from a defaulted loan which was insured against non-payment by the Secretary, from an overpayment by HUD, from delinquent rent payments due to HUD, or due to other reasons.

On or about September 2013, the HUD-insured mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Secretary's Statement (Sec'y. Stat.)* ¶ 2, Ex. A, *Declaration of Gary Sautter*<sup>1</sup> ("*Sautter Decl.*") ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Sec'y. Stat.* ¶ 3, Ex. A, *Sautter Decl.* ¶ 4.

In exchange for foreclosure relief, on October 2, 2013, Petitioner executed a Subordinate Note ("Note") in the amount of \$31,869.64 in favor of the Secretary. *Sec'y. Stat.* ¶ 4, Ex. B, Note, Ex. A, *Sautter Decl.* ¶ 4. Paragraph 4(A) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. *Sec'y. Stat.* ¶ 5, Ex. B, Note at ¶ 4(A)(i)); Ex. A, *Sautter Decl.* ¶ 4. On or about September 23, 2019, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec'y. Stat.* ¶ 6, Ex. B, Note at ¶¶ 4(A)(i) & (iii)), Ex. A, *Sautter Decl.* ¶ 4.

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "Office of Housing FHA-Comptroller, Director of Mortgage insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 or any such other place as Lender may designate in writing by notice to Borrower." *Sec'y. Stat.* ¶ 7, Ex. A, *Sautter Decl.*; Ex. B, ¶ 4(B)). Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent. *Sec'y. Stat.* ¶ 7, Ex. A, *Sautter Decl.* at ¶ 6; Ex. B, Note ¶ 4(B)).

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts as of November 30, 2020:

- (a) \$ 8984.38 as the unpaid principal balance;
- (b) \$ 14.98 as the unpaid interest on the principal balance at 1% per annum; and
- (c) interest on said principal balance from January 1, 2021 at 1% per annum until paid.

*Sec'y. Stat.* ¶ 8, Ex. A, *Sautter Decl.* ¶6.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated September 19, 2020 was sent to Petitioner. *Sec'y Stat.* at ¶ 10, Ex. A, *Sautter Decl.* ¶6.

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<sup>1</sup> Gary Sautter is Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

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 has not entered into a written repayment agreement in response to the Notice. *Sautter Decl.* at ¶ 8.

The U.S. Department of the Treasury issued a Wage Garnishment Order to Petitioner's Employer on October 19, 2020. Based on the issuance of the Wage Garnishment Order, Petitioner's wages have been garnished four times in the amount of \$176.47 each for a total of \$705.88. Two payments are reflected in the balance in paragraph 5 above and the other two payments have not been transferred to HUD's system from the U.S. Department of the Treasury's, Financial Management Services. *Sec'y Stat.* at ¶ 12, Ex. A, *Sautter Decl.* ¶ 9-10.

HUD reviewed Petitioner's biweekly pay statement for the period ending November 1, 2020. The pay statement reveals that Petitioner's biweekly gross salary is \$1610.00. Less allowable deductions of \$412.00, Petitioner's biweekly net disposable pay equals \$1,133.05. Administrative Wage Garnishment of 15% of Petitioner's disposable pay equals \$490.46 biweekly. Therefore, the Secretary's proposes a repayment schedule of \$255.80 biweekly, or 15% of Petitioner's disposable pay. *Sec'y Stat.* at ¶ 17, Ex. A, *Sautter Decl.* ¶9.

### **DISCUSSION**

Petitioner does not dispute the validity of the original debt amount of \$29,959.86, an amount already paid by Petitioner. *Hearing Request*, Attachments. Rather, Petitioner appeals the interest, penalties, and fees that have been assessed against the original debt amount since HUD issued the original demand for payment notice.

After reviewing Petitioner's documentary evidence, the Court has determined that the evidence offered by Petitioner fails to meet the burden of proof that imposition of interest, penalties, and fees are unenforceable against him. HUD is required by statute and regulation to charge interest and fees on past due debts. 1900.25 REV-5 § 2-5 (B). The Debt Collection Improvement Act of 1996 requires HUD to refer delinquent debts to the U.S. Department of the Treasury ("Treasury") for collection. 31 U.S.C. § 3711(g). When HUD sends a debt to Treasury, Treasury is authorized to charge HUD a fee for its collection efforts. 31 U.S.C. § 3711(g)(6). Such fees are then incurred by the debtor as the debtor's responsibility until such time as the debt is paid in full. Moreover, HUD is required to charge the debtor interest, administrative costs, and penalties. 31 U.S.C. § 3717(a) & (e)(1)-(2). Fees and administrative costs (which includes the fee charged by Treasury) total 30% of any amount collected by Treasury. Payments made by the debtor are first applied to fees, then to interest, and then finally to the principal. 31 C.F.R. § 901.9(f).

Petitioner however failed to provide a sufficient legal basis to persuade the Court to waive the interest and fees that have accrued to date on the subject debt. Petitioner also failed to demonstrate, by a preponderance of the evidence, that the interest and fees accrued are in fact not authorized in this case. As such, this claim is without merit and the debt alleged remains the obligation of Petitioner.

As a final point, Petitioner requests “in lieu of the primary amount received, would consideration be given to ZERO out the remaining fee/interest. The original balance has been paid in full.” While the record seems to reflect that Petitioner’s spouse has “been out of work since March 2020,” this matter is not relevant at this point because Petitioner did not raise this issue before the Court or present evidence of the same for the Court’s review. The alternative repayment plan offered by Petitioner in lieu of the primary amount is in fact beyond the scope of the Court’s jurisdiction. This Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may wish to renegotiate repayment terms with the Department or to discuss this matter with Counsel for the Secretary or the Director of HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203- 5121, who may be reached at 1-800-669-5152, extension 2859. See Marites Lara, HUDOA No. 19-AH-0191-AG-052 (October 22, 2020). Petitioner may also consider requesting a review of his household’s financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142). Otherwise, based on the record of evidence, the Court finds that Petitioner remains contractually obligated to pay the debt so claimed by the Secretary.

### **ORDER**

Based on the foregoing, the Order imposing the stay of referral of this matter on November 5, 2020 to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment of \$169.96 weekly or an amount equal to 15% of Petitioner’s monthly disposable income.

SO ORDERED.  
  
Vanessa L. Hall  
Administrative Judge

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**Review of determination by hearing officers.** A motion for reconsideration of this Court’s written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.