

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

In the Matter of:

George W. Speller,

Petitioner

21-VH-0110-AG-067

52-0883319WR

April 27, 2022

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing* (*Hearing Request*) filed on March 31, 2021, by Petitioner George W. Speller (“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 April 1, 2021, 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 May 4, 2021, the Secretary filed his *Statement* (*Sec’y. Stat.*) along with documentation in support of his position. Petitioner filed, along with his *Hearing Request* on April 1, 2021, certain documentary evidence as support for his claim of financial hardship. This case is now ripe for review.

FINDINGS OF FACT

This action is brought on behalf of the Secretary of the United States Department of Housing and Urban Development ("Secretary" or "HUD") pursuant to 31 U.S.C. § 3720D.

On February 19, 1993, Petitioner executed and delivered a Retail Installment Contract ("Note") in the amount of \$27,890.00 to Calvary Mobile Homes, Inc, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). *Secretary's Statement (Sec'y. Stat.)*, ¶ 2; Ex. A, Note.

The Note was contemporaneously assigned by Capital Carolina Homes to Logan-Laws Financial Corporation ("Logan-Laws"). Id. Logan-Laws was defaulted as an issuer of Mortgage-Backed Securities ("MBS") due to its failure to comply with the Government National Mortgage Association's ("Ginnie Mae") MBS program requirements. *Sec'y. Stat.*, ¶¶ 3-4; Ex. B, *Declaration of Rene Mondenedo*¹ (*Mondenedo Decl.*) at ¶ 4).

Upon default by First Beneficial, all of its rights, title, and interest in Petitioner's loan were assigned to Ginnie Mae by virtue of the Guarantee Agreement entered into between First Beneficial and Ginnie Mae. Id. As Ginnie Mae (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. *Sec'y. Stat.*, ¶ 6; Ex. B, *Mondenedo Decl.* at ¶ 5).

Petitioner is currently in default on the Note. The Secretary has made efforts to collect from Petitioner but has been unsuccessful. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$23,842.48 as the unpaid principal balance;
- (b) \$13,014.19 as the unpaid interest on the principal balance through March 18, 2021;
- (c) \$2,017.88 in administrative fees;
- (d) \$20,809.08 in Assessed Penalty; and,
- (e) 2% interest on said principal balance until paid.

Sec'y. Stat., ¶ 7; Ex. B, *Mondenedo Decl.* at ¶ 6.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Wage Garnishment Proceedings ("Notice") dated February 10, 2021 was sent to Petitioner. *Sec'y. Stat.*, ¶ 8; Ex. B, *Mondenedo Decl.* at ¶ 7). In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under mutually agreeable terms. Petitioner failed to enter into a written repayment agreement in response to the Notice. *Sec'y. Stat.*, ¶ 9; Ex. B, *Mondenedo Decl.* at ¶¶ 7-8).

¹ Rene Mondenedo is Director of the Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association ("Ginnie Mae") within the United States Department of Housing and Urban Development ("HUD").

Ginnie Mae proposes an administrative wage garnishment amount of 15% of the Petitioner's disposable pay. *Id.*

DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims that the proposed garnishment amount would create a financial hardship. Petitioner provided a copy of a list of monthly health and household expenses for which Petitioner is responsible. If the proposed garnishment is authorized, Petitioner maintains that financial hardship is unavoidable. *Hearing Request*, Attachment. Beyond the list of expenses offered to the Court, there is no record of additional proofs of payment or receipts to support Petitioner's position.

Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), Petitioner is required to show, by a preponderance of the evidence, that the proposed wage garnishment repayment schedule would create a financial hardship. In a case involving a claim of financial hardship, Petitioner "must submit 'particularized evidence,' including proofs of payment, showing that he will be unable to pay essential subsistence costs such as food, medical care, housing, clothing, or transportation." Ray J. Jones, HUDAJF 84-1-OA at 2 (March 27, 1985).


Herein, Petitioner submitted only a copy of a list of monthly expenses with his *Hearing Request*. This evidence, alone, is insufficient and fails to persuade the Court that the proposed repayment schedule would create a financial hardship. The Court twice ordered Petitioner on September 30, 2021 and February 3, 2022 to produce additional documentation to support and more sufficiently demonstrate his financial state. Petitioner was notified in both orders that "failure to comply would result in sanctions pursuant to 24 C.F.R. § 26.4(c), including judgment being entered on behalf of the opposing party or a decision based on the documents in the record of the proceeding." Petitioner failed to comply with both Orders.

In the absence of documentary evidence that supports Petitioner's monthly income and expenses, his claim of financial hardship lacks credibility. As a result, the Court is unable to determine whether the proposed garnishment amount would create a financial hardship. 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 unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, the Court finds that Petitioner's claim of financial hardship fails for lack of sufficient proof, and further finds that Petitioner remains contractually obligated to pay the subject debt.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter on April 1, 2022 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 in an amount equal to 15% of Petitioner's monthly disposable income.

SO ORDERED.

Vanessa L. Hall
Administrative Judge

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.