

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

In the Matter of:

**Edward Little,**

Petitioner

22-VH-0014-AG-012

721017894

April 14, 2023

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hearing Request*”) along with documentary evidence filed on November 2, 2021, by Edward Little ("Petitioner") concerning the existence and enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary").

**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 court hearing is conducted in accordance with the procedures set forth in 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).

**PROCEDURAL HISTORY**

Pursuant to 31 C.F.R. § 285.11(f)(4), on November 10, 2021, this Court stayed the issuance of an administrative 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 7, 2022, the Secretary filed a *Secretary's Statement* (“*Sec’y. Stat.*”), along with documentary evidence, in support of her position. To date, Petitioner has failed to comply with the Court’s subsequent Orders to provide additional evidence necessary for the Court’s consideration. This case is now ripe for review.

**FINDINGS OF FACT**

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A, because of a defaulted loan that was insured against non-payment by the Secretary.

In or about January 2010 and May 2014, the HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Sec'y. Stat.* at ¶ 2, Ex. A, *Declaration of Brian Dillon*<sup>1</sup> (“*Dillon Decl.*”), ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Id.* In exchange for foreclosure relief, on or about October 8, 2009 and again on February 27, 2014, Petitioner executed a Subordinate Note (“Notes”) in the amount of \$5,428.83 and \$16,583.83, respectively, in favor of the Secretary. *Sec'y. Stat.* at ¶ 2, Ex. B, Notes.

Paragraph 3(A) of the Notes 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.* at ¶ 5, Ex. B, Notes at ¶ 3(A)(i). On or about July 6, 2020, 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.* at ¶ 2; Ex. A, *Dillon Decl.* at ¶ 4; Ex. B, Notes ¶¶ 3(A)(i) & (iii). Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Notes at the addresses designated by the Notes. Notes at ¶ 3(B). *Sec'y. Stat.*, Ex. B, Note at ¶ 3(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.* at ¶ 8; Ex. A, *Dillon Decl.* ¶ 5. 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 through October 31, 2021:

- (a) \$21,944.25 as the unpaid principal balance;
- (b) \$91.40 as the unpaid interest on the principal balance at 1% per annum;
- (c) \$1,373.32 as the unpaid penalties and administrative costs; and
- (d) Interest on said principal balance from November 1, 2021 at 1% per annum until paid.

*Sec'y. Stat.* at ¶ 9; Ex. A, *Dillon Decl.* ¶ 5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated October 20, 2021 (“Notice”) was sent to Petitioner. *Sec'y. Stat.* at ¶ 10; Ex. A, *Dillon Decl.* ¶ 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.

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<sup>1</sup> Brian Dillon is Director of Asset Recovery Division for the U.S. Housing and Urban Development.

Petitioner did not enter into a written repayment agreement in response to the Notice. *Sec'y. Stat.* at ¶ 11; Ex. A, *Dillon Decl.* ¶¶ 7-8.

Petitioner submitted no financial statement, pay stub, or copies of monthly bills, therefore, HUD is unable to determine whether wage garnishment will cause financial hardship. In the absence of financial documentation from Petitioner, HUD's proposed repayment schedule is \$650.25 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. *Sec'y. Stat.* at ¶ 16; Ex. A, *Dillon Decl.* ¶¶ 9.

### **DISCUSSION**

Petitioner claims he is not responsible for the subject debt because he paid it in full to Wells Fargo. *Petitioner's Hearing Request*. As support, Petitioner offered into evidence a copy of a *Corporate Cancellation and Release* from Wells Fargo Home Mortgage. *Hearing Request*, Attachment. However, the *Corporate Cancellation and Release* shows only the satisfaction of the debt owed by Petitioner on the loan associated with the primary lender, Wells Fargo. *Id.* There is no language in the *Corporate Cancellation and Release* that indicates that funds were set aside to pay off the loan associated with the Note herein owed to HUD. *Id.* As a result, the Court is not convinced that Petitioner has met his burden of proof.

The Secretary's right to collect the alleged debt stems from the terms of the Note, not from the terms of payoff statements from the primary lender. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). After reviewing the evidence presented, this Court has determined that the evidence presented by Petitioner is insufficient as proof that the subject debt is unenforceable and does not exist. For Petitioner not to be held responsible for the full amount of the subject debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Petitioner has not provided any evidence demonstrating that HUD issued a release of its lien or that he has paid his debt owed to HUD. Instead, Petitioner's evidence demonstrates full payment of the primary mortgage and thus strengthens the Secretary's allegations.


This Court has consistently maintained that "assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due and legally enforceable." Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). In this case, Petitioner failed to introduce evidence that proves he was discharged from the debt associated with the Note in this proceeding. Therefore, the Court

must find that the evidence presented by the Petitioner is insufficient and, as a consequence, 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 to the U.S. Department of Treasury on November 10, 2021 for an 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 that is equal to 15% of Petitioner's disposable income.

SO ORDERED.  
  
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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.