

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

In the Matter of:

Charles C. Byrd,

Petitioner

22-VH-0103-AG-075

5526708 LL 9244

November 8, 2023

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* received by this Court on February 1, 2022 from Charles Byrd (“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”).

JURISDICTION

This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations. The judges of this Court have been designated to conduct this hearing pursuant to 24 C.F.R. § 17.81(b). This hearing shall be conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11 (as authorized by 24 C.F.R. § 17.81). A copy of the pertinent regulations is enclosed. This hearing shall be limited to a review of the written record unless otherwise ordered. This Court shall issue a written decision following that review.

PROCEDURAL HISTORY

Pursuant to 24 C.F.R. § 17.81(a), on February 11, 2022, the Court stayed the issuance of an administrative wage garnishment for Petitioner until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* (Notice of Docketing) at 2. On March 16, 2022 and February 17, 2023, the Secretary filed her Statement and subsequent Supplemental Statement respectively, along with documentary evidence in support of her position. On February 2, 2023, Petitioner his Statement in response to the Court’s Orders and in support of his position. This case is now ripe for review.

FINDINGS OF FACT

This action is brought on behalf of the Secretary because of a debt that 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.

According to the Secretary, on February 9, 1993, Petitioner executed and delivered a Retail Installment Contract (“Note”) to Showcase Homes (“Showcase”) in the amount of \$18,121.75, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). Simultaneously, the Note was assigned by Showcase to Logan-Laws Financial Corporation (“Logan laws”). 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 (“GNMA”) MBS program requirements. Upon default by Logan Laws, all its rights, title, and interest in Petitioner’s loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Logan Laws and GNMA. As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner.

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) \$11,317.96 as the unpaid principal balance as of 3/7/2022;
- (b) \$20,995.62 as the unpaid interest on the principal balance through 3/7/2022;
- (c) \$936.34 as the unpaid administrative fees through 3/7/2022;
- (d) \$6,130.15 in unpaid assessed penalties through 3/7/2022; and
2% interest on said principal balance from 3/8/2022, until paid.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated January 12, 2022, was sent to Petitioner. 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. To date, Petitioner has not entered into a written repayment agreement. Therefore the Secretary respectfully requests a finding that Petitioner's debt is past due and legally enforceable, and that the stay of referral of this matter to the U.S. Department of Treasury for collection by administrative wage garnishment be vacated so that the Secretary may proceed against Petitioner.

DISCUSSION

Petitioner does not dispute the existence of the subject debt or the fact that the debt is enforceable. Instead, Petitioner challenges the amount of the debt owed, and then extends an offer to arrange a repayment plan to pay in full the amount determined to be owed during this proceeding. As support, Ofori Lending Services, the lender for Petitioner’s primary mortgage, submitted a letter that was intended by Petitioner to serve as proof that the subject debt was paid in full. The Court determined that this evidence proved insufficient to establish payment of the subject debt. The documentation presented only referenced full payment of the primary

mortgage and the steps necessary to make such full payment official. Without evidence to prove his claim or evidence to refute the amount claimed by the Secretary, Petitioner has failed to meet his burden of proof that the amount claimed is erroneous. This Court has remained consistent in maintaining 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)). As a result, Petitioner’s debt amount claim fails for lack of proof.


Finally, Petitioner offers “to set up a repayment plan” for a monthly payment amount of \$200.00, a plan he claims was in place prior to receiving the notice for this proceeding. While Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend, or accept any repayment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or the Director of HUD’s Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

Based on the foregoing, Petitioner remain contractually obligated to pay the alleged debt in the amount so claimed by the Secretary.

The *Order* imposing the stay of referral of this matter to the U.S. Department of Treasury 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 of 15% of Petitioner’s disposable income.

SO ORDERED.

Vanessa L. Hall
Administrative Judge

Finality of Decision. Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

