

CORRECTED VERSION

(shaded portions only)

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

In the Matter of:

John Frauwirth,

Petitioner

22-VH-0201-AG-129

780796345

October 11, 2023

DECISION AND ORDER

This proceeding is before this Court upon a *Hearing Request*, along with documentary evidence, being filed on August 26, 2022 by 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”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government.

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 24 C.F.R. § 17.81(a), on September 22, 2022, the Court stayed the issuance of an administrative offset of any federal payment due to Petitioner until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral (Notice of Docketing)* at 2. Petitioner previously filed his *Statement* and additional documentary evidence along with his *Hearing Request* in support of his position. On October 28, 2022, the Secretary filed a *Secretary’s*

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Statement (Sec'y. Stat.) along with documentary evidence, in support of her position. 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 3720D, because of a defaulted loan that was insured against non-payment by the Secretary.

The Secretary contends, in her Statement, that on November 17, 2012, Petitioner executed and delivered a Note to Admirals Bank in the amount of \$23,478.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. Petitioner failed to make payment on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54, on September 18, 2017, Admirals Bank f/k/a Domestic Bank, assigned the Note to the United States of America. The Secretary is now the holder of the Note on behalf of the United States. Petitioner is currently in default on the Note. The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$21,527.99 as the unpaid principal balance as of August 31, 2022;
- (b) \$1,528.84 as the unpaid interest on the principal balance at 1.0% per annum through August 31, 2012; and
- (c) \$7,705.87 as the unpaid penalties and administrative costs as of August 31, 2022; and
- (d) Interest on said principal balance from September 1, 2022, at 1% annum until paid.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated July 5, 2022, was sent to Petitioner. Pursuant to 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. As of August 4, 2022, Petitioner has not entered into a written repayment agreement in response to the Notice.

HUD attempted to obtain Petitioner's paystub and to date Petitioner has not provided HUD with a current paystub. Therefore, the proposed repayment schedule is \$863.06 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. Based on the foregoing, the Secretary requests that the Court find Petitioner's debt past due and legally enforceable, and that the Secretary's proposed repayment terms fair.

DISCUSSION

Petitioner claims that he does not owe the debt because the subject debt was listed as a debt associated with a previous bankruptcy proceeding and therefore discharged. As support, Petitioner offered into evidence a copy of a Chapter 13 Order of Discharge ("Discharge Order") issued by the United States Bankruptcy Court, District of New Hampshire, on February 22, 2022, along with the listing of claims. No other documentation was offered as proof that Petitioner was released from the subject debt so the Court will consider what has been presented to date.

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The Secretary maintains that in Petitioner's *Hearing Request*, "Petitioner alleges that the subject debt was included in his spouse's Chapter 13 bankruptcy proceeding (case number 17-10073), filed in the District of New Hampshire Bankruptcy Court on January 24, 2017, and that the debt was subsequently discharged. But Petitioner is mistaken." Further, "the bankruptcy proceeding was filed by Eric Frauwirth as the sole debtor." While Petitioner was not a co-debtor in the bankruptcy proceeding, the Secretary claims that he was nevertheless a co-debtor on the Note. Eric Frauwirth's bankruptcy was discharged on February 22, 2022 and no payment was issued to HUD or the Title I lender, Admiral's Bank, through the bankruptcy. HUD's records further confirm the notion that no payment was received by HUD towards the subject debt. A review of the list of creditors associated with the Discharge Order also reflects Petitioner's failure to pay in full the subject debt.

For Petitioner to be released from the subject debt, he needs to either produce documentary evidence in the form of a written release or proof of consideration directly from HUD, or as an offer of proof of a bankruptcy discharge order that specifically identifies HUD on the schedule of creditors in the bankruptcy proceeding. As further support that Petitioner remains responsible for the subject debt, the Discharge Order itself states that "Some debts are not discharged. Examples of debts that are not discharged are: ... *debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case.*" (Emphasis added). In this case, the bankruptcy court decided HUD was not one of the creditors to be discharged because HUD was not listed.

The Discharge Order further states that it, "does not stop creditors from collecting from anyone else who is also liable on the debt, such as an insurance company or a person who cosigned or guaranteed a loan." Once the discharge was ordered in Eric Frauwirth's bankruptcy case, HUD aptly resumed its debt collection activities against Petitioner as a co-debtor because Petitioner was no longer protected by the co-debtor's bankruptcy stay.

For Petitioner not to be held responsible for the full amount of the subject debt in this case, there must be either a release in writing from the former lender (HUD herein) explicitly relieving Petitioner's obligation, "or valuable consideration accepted by the lender" indicating intent to release. Petitioner has failed to produce either in this case. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). It is well established 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). Therefore, consistent with case law precedent, in the absence of evidence from Petitioner the Court must find that Petitioner is responsible for defaulting on the Note associated with the subject debt.

ORDER

Based on the foregoing, Petitioner shall pay the subject debt in the amount so claimed by the Secretary.

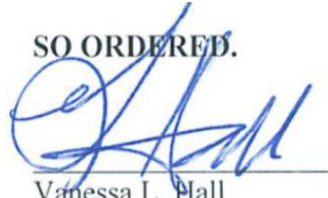
The *Order* imposing the stay of referral of this matter to the U.S. Department of Treasury on August 26, 2022 for administrative wage garnishment is **VACATED**. It is hereby

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ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount so claimed by the Secretary.

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.