

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

In the Matter of:

HONGMEI ZHANG,

Petitioner.

23-AF-0163-AG-093
(Claim No. 721020089)

December 3, 2024

DECISION AND ORDER

On September 1, 2023, Hongmei Zhang (“Petitioner”) filed a *Hearing Request* (“*Request*”) seeking a hearing concerning the amount, enforceability, or payment schedule 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 garnishments as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the judges of the Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

FINDINGS OF FACT

On December 2, 2021, Petitioner and her ex-husband executed and delivered a California Partial Claim Note (“The Note”) in favor of the Secretary in the principal amount of \$60,922.96. The funds secured by the Note were paid by the Secretary to Petitioner’s primary mortgage lender to bring Petitioner’s mortgage current to provide foreclosure relief.

The terms of the Note included Petitioner’s promise to pay, secured by a mortgage, deed of trust, or similar security instrument to protect the Secretary from losses if Petitioner defaulted on the Note. The Note required payment on or before March 1, 2048, or when the first of the following events occurs:

- i. Borrower has paid in full all amounts due under the primary Note and related mortgage, deed of trust, or similar security instruments insured by the Secretary;
- ii. the maturity date of the primary Note has been accelerated;
- iii. the primary Note and related mortgage, deed of trust, or similar security instrument are no longer insured by the Secretary.

On or about February 9, 2022, the FHA mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated that the primary mortgage was paid in full. The total amount due now consists of:

- i. \$60,922.96 as the unpaid principal balance as of September 30, 2023;
- ii. \$406.00 as the unpaid interest on the principal balance at 1.0% per annum through September 30, 2023;
- iii. \$3,315.84 as the unpaid penalties and administrative costs on the balance through September 30, 2023; and
- iv. interest on said principal balance from October 1, 2023, at 1.0% per annum until paid.

A "Notice of Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated August 7, 2023, was sent by the U.S. Department of Treasury on behalf of HUD. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms.

Petitioner provided HUD with two of her recent pay statements dated August 25, 2023, and September 8, 2023, with corresponding checks. HUD proposes a wage garnishment repayment schedule of \$224.46 per bi-weekly period, an amount equal to 15% of Petitioner's disposable income based upon Petitioner's September 8, 2023, pay statement.

DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. See 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. See 31 C.F.R. § 285.11(f)(8)(ii). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue hardship to Petitioner, or that the alleged debt is legally unenforceable. Id.

As evidence of the Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable* together with a copy of the California Partial Claim Note signed by Petitioner and the Declaration of Brian Dillon, Director, Asset Recovery Division, wherein Mr. Dillon states the full amount of the debt owed by Petitioner. The express language of the Note, signed and agreed to by Petitioner, states under "Borrower's Promise to Pay," that "[i]n return for a loan received from Lender, Borrower promises to pay the principal sum of Sixty Thousand Nine Hundred Twenty Two and 96/100ths Dollars (US \$60,922.96), to the order of the Lender." (emphasis removed). The Note further states that payment will be made at the Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, Washington, D.C. Accordingly, the copy of the Note submitted by HUD under oath is sufficient to establish the existence and the amount of the debt owed by Petitioner.

In her *Request*, Petitioner does not contest the existence of the debt, but contests the amount owed. However, Petitioner has not provided any evidence to refute the amount of the

debt as claimed by the Secretary. It is axiomatic that assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable. See In re Samuel and Delisha Thuo, HUDOHA No. 23-VH-0126-AG-067 (Sept. 20, 2024); In re Anna Bolton, HUDOHA No. 23-VH-0146-AG-077 (Sept. 13, 2024); In re John Tipton, HUDOHA No. 23-VH-0153-AO-083 (Sept. 12, 2024).¹ Accordingly, the Tribunal finds Petitioner has not met her burden to prove that the amount of the debt is incorrect.

Petitioner also states in a subsequent pleading that that she initially believed the letter regarding payment of the Note was fraudulent. Petitioner goes on to request a deduction of the additional fees, penalties, and accrued interest because she is a single mother and is solely responsible for the Note. If found liable for the debt, Petitioner may also be responsible for U.S. Department of Treasury debt collection fees pursuant to 31 U.S.C. § 3711(g)(6). Moreover, Petitioner's obligation to repay this debt and the accrual of interest began when her primary mortgage was paid in full and not with the issuance of demand letters that Petitioner ignored. Accordingly, the Tribunal finds that the imposition of fees and penalties is authorized, and Petitioner had not demonstrated that she is not liable for them.

Petitioner further claims that garnishment of her wages would cause financial hardship. It has long been held that financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. See In re Nicole Spencer, HUDOHA No. 22-AM-0132-AG-090 (Nov. 15, 2023); In re Tiffany Weber, HUDOHA No. 22-VH-0024-AG-020 (Apr. 19, 2023); In re Caren Lacuesta, HUDOHA No. 21-VH-0186-AG-102 (Feb. 16, 2023).² But 24 C.F.R. § 285.11(k)(3) provides that if financial hardship is found, this Tribunal may downwardly adjust the garnishment amount to reflect the debtor's financial condition. To prove financial hardship, Petitioner submit particularized evidence, including but not limited to, proofs of payment for food, medical care, housing, clothing or transportation that Petitioner will be unable to pay. See In re Dominique Tozzi, HUDOHA No. 23-VH-0054-AG-032 (Feb. 15, 2024); In re William

¹ See also In re Jannette M. Bush, HUDOHA No. 22-AM-0158-AG-106 (Aug. 30, 2024); In re Michael Georgia, HUDOHA No. 23-VH-0089-AG-051 (Apr. 11, 2024); In re Penny Pope, HUDOHA No. 21-VH-0063-AG-036 (Mar. 28, 2022); In re Yadira Chavez, HUDOHA No. 21-VH-0035-AG-026 (Feb. 14, 2022); In re Brady Urbanek and Samantha Urbanek, HUDOHA 18-VH-0117-AG-061 (Mar. 7, 2019); In re Michelle Lowrie-Jackson, HUDOHA No. 15-AM-0005-AG-002 (Oct. 17, 2016); In re Joan Hattan, HUDOHA No. 11-M-NY-LL23 (June 29, 2011); In re Trudy Burks, HUDOHA No. 10-M-CH-AWG62 (Aug. 26, 2010); In re James Visconto, HUDOHA No. 10-H-NY-AWG01 (Jan. 21, 2010); In re Sara Hedden, HUDOHA No. 09-H-NY-AWG95 (July 8, 2009); Troy Williams, HUDOHA No. 09-M-CH-AWG52 (June 23, 2009); In re Darrell Van Kirk, HUDOCA No. 03-A-CH-AWG03 (Jan. 27, 2003); Eric Cicalese, HUDOCA No. 03-A-CH-AWG01 (Jan. 3, 2003); Bonnie Walker, HUDOCA No. 95-G-NYT300 (July 3, 1996).

² See also In re Sandra S. May, HUDOHA No. 21-VH-0234-AG-136 (Feb. 8, 2023); In re Jason and Danielle Luke, HUDOHA No. 21-VH-0230-AG-133 (Jan. 10, 2023); In re Jeffrey L. Hunt, HUDOHA No. 21-VH-0081-AG-045 (May 6, 2022); In re Abimbola Fowokan, HUDOHA No. 19-AM-0031-AG-005 (Jan. 13, 2022); In re Robert Vasquez, HUDOHA No. 20-VH-0001-AG-001 (Sept. 23, 2021); In re Steven Davis, HUDOHA No. 20-VH-0045-AG-024 (Sept. 1, 2021); In re Venus Wethington, HUDOHA No. 18-AM-0044-AG-026 (July 21, 2021); In re Cale Garrison, HUDOHA No. 20-AM-0006-AG-006 (July 14, 2021); In re Joseph Frame, HUDOHA No. 19-VH-0204-AG-061 (July 30, 2020); In re Ronnie E. Chavis, HUDOHA No. 19-AM-0213-AG-066 (July 24, 2020); In re Jennifer Tremper, HUDOHA No. 19-VH-0059-AG-012 (Aug. 7, 2019); In re Frank Orlando, HUDOHA No. 18-VH-0055-AG-033 (June 13, 2019); Raymond Kovalski, HUDOCA No. 87-1681-G18 (Dec. 8, 1986).

Bogue, HUDOHA No. 22-VH-0094-AG-067 (Dec. 21, 2023); In re Brandy Galloway, HUDOHA No. 20-AM-0269-AG-169 (Nov. 28, 2023).³

The *Notice of Docketing* afforded Petitioner the opportunity to present evidence in support of a financial hardship claim. The form through which Petitioner requested a hearing also advised Petitioner to “provide a signed financial statement along with copies of earnings and income records and proof of expenses.” However, to date, Petitioner has not submitted a Consumer Debtor Financial Statement or corresponding evidence in support of her claim of financial hardship. Petitioner only submitted two pay statements with corresponding checks and mortgage payment information. Thus, the Tribunal finds that Petitioner has failed to meet her burden to prove that the Secretary’s proposed repayment schedule would cause financial hardship.

Finally, Petitioner requests information to pay the Note in monthly installments for 10 years or make a lump sum payment. This Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Secretary. Accordingly, the Secretary may garnish up to 15% of Petitioner’s disposable pay. Petitioner is entitled to seek reassessment of the repayment schedule in the future in the event she experiences materially-changed financial circumstances. See 31 C.F.R. § 285.11(k).

ORDER

For the reasons set forth above, the Tribunal finds the subject debt to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is:

ORDERED that the Secretary is authorized to seek administrative wage garnishment in the amount of 15% of Petitioner’s disposable pay, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner’s disposable pay. It is

FURTHER ORDERED that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

SO ORDERED,

Alexander Fernández-Pons
Administrative Law Judge

³ See also In re Dana Bynum, HUDOHA No. 22-AM-0061-AG-044 (Nov. 21, 2023); In re Nicole Spencer, HUDOHA No. 22-AM-0132-AG-090 (Nov. 15, 2023); In re Tiffany Weber, HUDOHA No. 22-VH-0024-AG-020 (Apr. 19, 2023); In re Caren Lacuesta, HUDOHA No. 21-VH-0186-AG-102 (Feb. 16, 2023); In re Sandra S. May, HUDOHA No. 21-VH-0234-AG-136 (Feb. 8, 2023); In re Michele Fortenbaugh, HUDOHA No. 21-VH-0242-AG-142 (Jan. 27, 2023); In re Arletha Smith, HUDOHA No. 21-VH-0096-AG-057 (Nov. 10, 2022); In re Michael Bridges, HUDOHA No. 21-VH-0092-AG-053 (Oct. 28, 2022); In re Jeffrey L. Hunt, HUDOHA No. 21-VH-0081-AG-045 (May 6, 2022); In re George W. Speller, HUDOHA No. 21-VH-0110-AG-067 (Apr. 27, 2022); In re Annette Robinson, HUDOHA No. 20-VH-0211-AG-125 (Nov. 18, 2021); In re Erica Heath, HUDOHA No. 20-VH-0268-AG-168 (Nov. 17, 2021); In re Robert Vasquez, HUDOHA No. 20-VH-0001-AG-001 (Sept. 23, 2021); Ray J. Jones, HUDAJF 84-1-OA (Mar. 27, 1985).

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.).