

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

In the Matter of:

Matthew Balut

Petitioner

23-VH-0025-AG-015

721017325

December 1, 2023

ORDER OF DISMISSAL

In 24 C.F.R. §§17.69 (b) and 26.4 (c) it provides, in general, that failure by the Petitioner to submit evidence within 60 calendar days from the date of the Department's Notice of Intent will result in a dismissal of Petitioner's request for review by the HUD Office of Hearings and Appeals. On December 12, 2022, Petitioner filed a *Request for Hearing* to review HUD's determination that Petitioner owed the subject debt. The Secretary's *Statement*, along with documentary evidence, was filed on December 22, 2022 in support of her position.

In wage garnishment cases such as Petitioner's, "whenever an agency is required to afford a debtor a hearing, the agency shall provide the debtor with a reasonable opportunity for an oral hearing *when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.*" (Emphasis added) 31 C.F.R. §285.11 (f)(3)(i). Further, "in those cases when an oral hearing is not required, an agency shall nevertheless *accord the debtor a "paper hearing," that is, an agency will decide the issues in dispute based upon a review of the written record. The agency will establish a reasonable deadline for the submission of evidence.*" (Emphasis added) 31 C.F.R. §285.11 (f)(3)(iii).


There is no record of evidence for the Court's review to make such determinations either to support Petitioner's claim that the subject debt was not owed or was paid off, or that Petitioner was released from the contractual obligation to pay the subject debt. To date, Petitioner has failed to comply with any of the Court's *Orders* to Petitioner's last known address on December 14, 2022, May 19, 2023, and August 17, 2023 to produce evidence to prove HUD issued Petitioner a written release from the subject debt. The Order to Show Cause issued by the Court to Petitioner on August 17, 2023 specifically stated "Failure to comply with this Order may result in sanctions being imposed by the Court pursuant to 24 C.F.R. § 26.4(c)-(d), including judgment entered on behalf of the opposing party, *dismissal of this action*, or a decision based on the documents in the record of this proceeding. Non-compliance, and timeliness of the same, shall be determined based on the Court's assessment of the record of the proceeding." (Emphasis added).

Petitioner failed to comply with the Show Cause Order last issued, and even failed to follow proper protocol had there been a change of address since the filing of his request for a

hearing.¹ The lapse of time since December 2022 to date has provided Petitioner with sufficient opportunities to comply with the Court's *Orders* but Petitioner has failed to do so. As a result, the Court is unable to review and determine the credibility of Petitioner's argument or decide the issues in dispute based on the written record available.

Consistent with the provisions of 24 C.F.R. §§ 17.69 (b) and 26.4 (c) and (d), Petitioner's appeal is **DISMISSED WITH PREJUDICE** *sua sponte* due to Petitioner's non-compliance with the Court's *Orders* to produce the necessary evidence for the Court's review.

The stay of proceeding issued on December 12, 2022 is hereby **VACATED**.

SO ORDERED.

Vanessa L. Hall
Administrative Judge

¹ Should Petitioner's address change, the onus falls on the Petitioner to notify the Government of such change of address. See Appeal of: UPCAR Contractors, Inc., HUDBCA No.81-561-C3 (April 21, 1982) (holding that it is the obligation of a party to notify the Board [herein Court] of any change of address so that it can be served with notices and pleadings or to make other appropriate arrangement for expeditious receipt of mail. Failure to do so is at the risk of the party failing to make such arrangements).