

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

In the Matter of:

**Samuel and Delisha Thuo,**

Petitioner

Docket No. 23-VH-0126-AG-067

Claim No. 7-21019406

September 20, 2024

**DECISION AND ORDER**

On July 13, 2023, Samuel and Deliesha Thuo, (“Petitioners”) filed a *Request for Hearing* (“Hearing Req.”) concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“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 31 C.F.R. § 285.11(f) (4), on July 19, 2023, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On September 13, 2023, the Secretary filed his *Statement* along with documentation in support of his position. To date, other than limited evidence submitted by Petitioners with their *Hearing Request* on July 13, 2023, Petitioners have failed to file evidence that sufficiently supports their position. This case is now ripe for review.

## **FINDINGS OF FACT**

This action is brought on behalf of the Secretary of the United States Department of Housing and Urban Development (“Secretary” or “HUD”) pursuant to 31 U.S.C. § 3720D.

According to the Secretary, on or about November 27, 2020, DeLiesha and Samuel Thuo (“Petitioners”) executed and delivered to the Secretary a Partial Claim Note (the “Note”) dated November 17, 2020, in the principal amount of \$13,425.38. As a means of providing foreclosure relief to Petitioners, HUD advanced funds to Petitioners’ FHA insured first mortgage lender; and in exchange for such funds, Petitioners executed the Note in favor of the Secretary.

By terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs (4)(A)[o]n May 1, 2046 or, if earlier, 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 instrument insured by the Secretary; or (ii) the maturity date of the primary note has been accelerated; or (iii) the primary note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary.

On or about November 16, 2021, the FHA Insurance on Petitioners’ primary mortgage was terminated, as the lender indicated that the mortgage was paid in full. Thus, and by its terms, the Note became due. HUD’s records indicate that the debt owed pursuant to the Note is enforceable, unpaid and past due. Accordingly, HUD has attempted to collect the amount due under the Note, but

Petitioners remain indebted to HUD. Petitioners are justly indebted to the Secretary in the following amounts:

- a. \$7,858.37 as the unpaid principal balance as of August 31, 2023;
- b. \$13.10 as the unpaid interest on the principal balance at 1.0 % per annum through August 31, 2023; and,
- c. interest on said principal balance from September 1, 2023, at 1.0 % per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated March 21, 2023, was mailed to Samuel Thuo at his last-known address. A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated April 5, 2023, was mailed to DeLiesha Thuo at her last-known address. The Notices of Intent to Initiate Administrative Wage Garnishment Proceedings issued to Petitioners are collectively referred to as herein as the “Notices.” By the Notices and in accordance with 31 C.F.R. 285.11(e)(2)(ii), Petitioners were each afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. However, Petitioners did not enter into any such agreement(s) as required.

Treasury’s records indicate that an Administrative Wage Garnishment order was issued to Samuel Thuo’s employer on April 21, 2023. Based on the Garnishment Order, Mr. Thuo’s wages were garnished twice in the amount of \$499.99 each time. Those garnishment payments are reflected in the balance claimed by HUD above herein. HUD’s efforts to obtain Petitioners current pay stubs and financial information were unsuccessful. Accordingly, the Secretary proposes an Administrative Wage Garnishment repayment schedule in the amount of \$499.99 per pay period, or an amount equal to 15% of Petitioners’ disposable income.

Based on the foregoing, the Secretary requests a finding that the Petitioners' debt, claimed herein by HUD, is past due and legally enforceable, and seeks authorization of the proposed repayment schedule.

### **DISCUSSION**

In this case, Petitioners dispute the existence of the subject debt. Petitioners more specifically claim:

We have included paperwork from the US Department of Housing and Urban Development showing that we owe \$13425 which was due to Covid mortgage relief (forbearance). The same amount of \$13425 is recorded to be closed in our credit report and we believe that this amount was paid when we refinanced our home at [REDACTED] in November 2021. We have also included reports from our credit report that reflect that this amount is closed and no longer owed.

As support, Petitioners introduced into evidence a copy of their credit report that they claim would prove that the subject debt was no longer owed.

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), the burden of proof is on Petitioners to show, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect. In this case, the Secretary's right to collect the subject debt emanates from the terms of the Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). According to the Note, Petitioners are responsible for payment of the subject debt should a default occur. Such default has occurred so technically Petitioners should be held accountable for payment of the debt owed. While Petitioners believe that the debt is no longer owed because of what is reflected in a credit report, the Secretary counters by arguing:

Petitioners' reliance upon that information is misplaced. The Credit Karma report also indicates that the account was closed on February 15, 2023, as the result of a "Collection Account Transfer." HUD's records correspond with that information, indicating that collection of Petitioners' delinquent debt was transferred to the U.S. Department of Treasury ("Treasury") on February 28, 2023. HUD and Treasury cannot simultaneously report the same debt to the credit bureaus; therefore, HUD's reporting of this debt to the credit bureaus reflects a zero balance and that the account transferred.

This Tribunal agrees. For Petitioner to prove otherwise, they must offer into evidence of (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) valid or valuable consideration paid to HUD to release Petitioners from their obligation, not a copy of a credit report. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03A-CH-AWG09 (January 30, 2003)); William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155

(October 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518-H51 (January 27, 1988); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986).

In this instance, Petitioners have failed to offer proof either of a written release directly from HUD discharging Petitioners from the subject debt, or evidence of valuable consideration paid to HUD in full satisfaction of the subject debt. Case law precedent has firmly established 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, this Tribunal is unable to determine the credibility of Petitioners’ argument in the absence of such evidence. Therefore, this Tribunal must find that Petitioners’ claim fails for lack of proof.

Next, Petitioners filed in the record copies of a *Notice of Intent to Offset* and a related *Demand Notice*. This garnishment proceeding only addresses issues related to Petitioners’ appeal of the proposed administrative wage garnishment, not potential issues related to an administrative offset. In other words, when the Court assumed jurisdiction over Petitioners’ administrative wage garnishment proceeding for which they filed an appeal, this Tribunal did not automatically assume jurisdiction over the administrative offset of Petitioners’ tax refund for which Petitioners did not file an appeal. As a result, the offset or levy of Petitioner’s tax refund is not relevant in this garnishment proceeding and thus will not be addressed. See 31 C.F.R. § 285.11(f)(8)(ii).

As a final point, Rule 26.4 (d) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*. (Emphasis added).

Accordingly, pursuant to Rule 26.4(d), Petitioners’ non-compliance with the subsequent Orders issued by this Tribunal provides an additional basis for rendering a decision against Petitioners.


### **ORDER**

Based on the foregoing, this Tribunal must find that subject debt is duly owed by Petitioners as claimed by the Secretary.

The Order issued on July 19, 2023 imposing the stay of referral of this matter to the U.S. Department of Treasury for 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 an amount equal to 15% Petitioner’s monthly disposable pay.

SO ORDERED.

  
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Vanessa L. Hall  
Administrative Judge

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**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.*).