

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

In the Matter of:

Douglas Edward Pretty,

Petitioner.

Docket No. 24-VH-0013-AG-009

Claim No. 721020820

December 30, 2024

DECISION AND ORDER

This proceeding is before the Tribunal upon a request for hearing (“*Hearing Request*”) filed on October 26, 2023, by Douglas Edward Pretty (“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”). This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable regulations.

JURISDICTION

The administrative judges of this Tribunal 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 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. *Id.* § 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 November 1, 2023, this Tribunal stayed the issuance of a wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), at 2). Petitioner filed documentary evidence with his *Hearing Request*. On December 28, 2023, the Secretary filed her *Statement (Sec’y. Stat.)* along with documentation in support of her position. Petitioner has been given an opportunity to file evidence and argument, but has not submitted anything except his *Hearing Request*. This case is now ripe for review.

FINDINGS OF FACT

This debt collection action is 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.

According to the Secretary, Petitioner executed and delivered to the Secretary a Promissory Note (the “Note”) dated October 3, 2018, in the principal amount of \$28,211.00. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner’s FHA-insured first mortgage lender, and in exchange for such funds, Petitioner executed the Note in favor of the Secretary.

By the terms of the Note, the amount to be repaid thereunder becomes due and payable on November 1, 2048, 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.

The Secretary states that on or about April 20, 2022, Petitioner’s primary mortgage was paid in full and the FHA mortgage insurance was terminated by the lender causing the Note to become due. HUD’s records indicate that the debt owed pursuant to the Note is enforceable and past due. Accordingly, HUD has attempted to collect the amounts due pursuant to the Note, but Petitioner remains indebted to HUD.

The Secretary asserts that Petitioner is justly indebted to HUD in the following amounts:

- (a) \$28,211.00 as the unpaid principal balance as of October 31, 2023;
- (b) \$164.50 as the unpaid interest on the principal balance at 1% per annum through October 31, 2023;
- (c) \$1,750.58 as the unpaid penalties and administrative costs as of October 31, 2023; and
- (d) interest on the principal balance at 1% per annum from November 1, 2023.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated October 4, 2023, was sent to Petitioner’s last known address. In accordance with 31 C.F.R. § 285.11(e)(2)(ii) and the Notice, Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. However, to date, Petitioner has not entered into any such agreement.

Petitioner did not provide HUD with a copy of his current pay stub. Accordingly, the Secretary proposes a wage garnishment of \$837.00 per month to liquidate the debt in approximately three years, or, alternatively, 15% of Petitioner’s disposable pay. Based on the foregoing, the Secretary requests the Tribunal find Petitioner’s debt is past due and legally enforceable, and seeks authorization of the proposed repayment schedule.

DISCUSSION

Petitioner argues that when he sold the property the title insurance company was responsible for paying off his debt at the closing. As support, Petitioner offers into evidence a copy of an ALTA Commitment for Title Insurance from Chicago Title Insurance Company.


After reviewing Petitioner's documentary evidence, the Tribunal has determined that Petitioner's burden of proof has not been met. For Petitioner not to be held liable for the full amount of the subject debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). In this case, Petitioner has failed to present sufficient documentary evidence that demonstrates that the subject debt was actually paid in full. The paperwork Petitioner submitted pertains to Petitioner's primary mortgage, not the Note in favor of the Secretary. The paperwork also does not reference the debt owed to HUD or HUD's lien information. As a result, Petitioner's claim fails for lack of proof.

Because Petitioner has failed to produce evidence of a written release from his obligation to pay the subject debt, or of valuable consideration paid to HUD in satisfaction of the debt, the Tribunal finds that Petitioner has failed to meet his burden of proof. Therefore, Petitioner is responsible for payment of the subject debt.

ORDER

Based on the foregoing, the November 1, 2023, Order imposing the stay of referral of this matter to the U.S. Department of Treasury for an administrative wage garnishment is hereby **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount equal to \$837.00 per month, or, alternatively, 15% of Petitioner's monthly discretionary 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.*).