

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

In the Matter of:

ROBERT HODGMAN-BURNS,

Petitioner.

Docket No. 24-VH-0021-AG-015
(Claim No. 721020447)

April 1, 2025

DECISION AND ORDER

This matter is before this Tribunal upon a *Hearing Request* filed by Robert Hodgman-Burns (“Petitioner”) on November 7, 2023. In the *Hearing Request*, Petitioner denied owing a debt to the United States Department of Housing and Urban Development (“HUD”), which HUD seeks to collect by garnishing Petitioner’s wages. Although Petitioner disputed the existence of the debt, he did not provide documentary evidence with his *Hearing Request*.

On November 8, 2023, this Tribunal issued an order requiring HUD and Petitioner to each submit documentary evidence related to the existence of this debt. HUD timely complied with the order and filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable and Proposed Repayment Schedule* (“Secretary’s Statement”) on December 15, 2023. Petitioner, however, did not comply with this Tribunal’s order to present evidence.

Having not received any response from Petitioner, this Tribunal issued an *Order to Show Cause* on August 2, 2024, wherein Petitioner was again ordered to file documentary evidence in support of his position that he does not owe the subject debt. Petitioner failed to respond and, to date, has not presented any evidence to this Tribunal.

The Parties have been afforded the opportunity to present arguments and evidence in support of their prospective positions. Accordingly, this matter is ripe for decision.

APPLICABLE LEGAL PRINCIPLES

Administrative Wage Garnishment. The Debt Collection Improvement Act of 1996 authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of nontax debts owed to the United States government. 31 U.S.C. § 3720D; see also 31 C.F.R. § 285.11(d) (“General rule. Whenever an agency determines that a delinquent debt is owed by an individual, the agency may initiate proceedings administratively to garnish the wages of the delinquent debtor.”); 24 C.F.R. § 17.81. Garnishment is the process of withholding amounts from an employee’s disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order. 31 C.F.R. § 285.11(c).

Hearings. The Secretary of HUD has designated the judges of this Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. 24 C.F.R. § 17.81(b). Hearings are conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. This Tribunal shall generally afford a debtor the right to a “paper hearing” wherein the issues in dispute are decided based upon a review of the written record. 31 C.F.R. § 285.11(f)(3)(iii).

HUD has the initial burden to prove the existence or amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). If the petitioner disputes the existence or amount of the debt, the petitioner must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. *Id.* at § 285.11(f)(8)(ii). Proving something by a preponderance of the evidence requires convincing “the trier of fact to believe that the existence of a fact is more probable than its nonexistence.” *Metro. Stevedore Co. v. Rambo*, 521 U.S. 121, 137 n.9 (1997) (quoting *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622 (1993)).

FINDINGS OF FACT

In March 2021, HUD advanced funds to Petitioner’s Federal Housing Administration (“FHA”) insured first mortgage lender as a means of providing foreclosure relief to Petitioner. In exchange, Petitioner executed a Maine Note (“HUD Note”). The HUD Note identified the Secretary of HUD as the lender, and a principal amount of \$13,440.09. The terms of the HUD Note require payment on October 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 Instruments 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 HUD Note also required that “[p]ayment shall be made at the Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 or any such other place as Lender may designate in writing....”

On March 2, 2022, the FHA insurance on Petitioner’s primary mortgage was terminated, as the lender indicated that the mortgage was paid in full. By the terms of the HUD Note, the satisfaction of the primary mortgage and termination of the FHA insurance resulted in the HUD Note becoming immediately due.

HUD attempted to collect the amount due under the HUD Note but was unsuccessful. On October 5, 2023, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) was sent to Petitioner. The Notice informed Petitioner of the opportunity to enter into a written repayment agreement under terms acceptable to HUD. However, Petitioner never

entered into any such agreement. Therefore, Petitioner is indebted to HUD in the following amounts:

- a. \$13,440.09 as the unpaid principal balance as of November 30, 2023;
- b. \$100.80 as the unpaid interest on the principal balance at 1.0% per annum through November 30, 2023;
- c. \$861.37 as the unpaid penalties and administrative costs as of November 30, 2023; and
- d. interest on said principal balance from December 1, 2023, at 1% per annum until paid.

DISCUSSION

HUD claims that Petitioner owes a valid debt to HUD and proposes a repayment schedule in the amount of \$400.06 per month or in an amount equal to 15% of Petitioner's monthly disposable pay. HUD bears the initial burden to prove the existence or amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). In support of its position, HUD has produced a copy of the HUD Note bearing Petitioner's signature, and the sworn Declaration of Brian Dillon ("Declaration"), who is the Director for the Asset Recovery Division of HUD's Financial Operations Center.

The HUD Note establishes that Petitioner promised to pay the Secretary of HUD in return for a loan, and that payment would be due if Petitioner's primary mortgage was paid in full or no longer insured by the Secretary. The Declaration explained that the insurance on Petitioner's primary mortgage was terminated on or about March 2, 2022, because that lender indicated that the primary mortgage was paid in full. The Declaration adds that HUD has attempted to collect on this debt, but Petitioner remains delinquent.

This Tribunal has reviewed the Secretary's Statement and its supporting evidence and finds that HUD has met its initial burden to prove the existence and amount of the debt. Therefore, the burden shifts to Petitioner to prove that no debt exists, or the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii).

As noted *supra*, Petitioner has not complied with this Tribunal's orders to provide evidence in support of his position that he does not owe the subject debt. This Tribunal has consistently held that "assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable." *In re Hongmei Zhang*, HUDOHA No. 23-AF-0163-AG-093, slip op. at 3 (Dec. 3, 2024). Accordingly, this Tribunal finds that Petitioner has not met his burden to prove, by a preponderance of evidence, that no debt exists.

ORDER

For the reasons set forth above, this 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

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.*).