

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

In the Matter of:

MARCOS POLO,

Petitioner.

24-VH-0033-AG-026
(Claim No. 721020376)

July 3, 2024

DECISION AND ORDER

On November 15, 2023, Marcos Polo (“Petitioner”) filed a hearing request 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 allegedly 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 pursuant to 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

On November 15, 2023, Petitioner filed his request for a hearing and included documentary evidence in support of his position that he does not owe the alleged debt in this case. Pursuant to 31 C.F.R. § 285.11(f)(4), on November 17, 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 December 8, 2023, the Secretary filed her *Statement* along with documentation in support of her position. Petitioner, on April 9, 2024, filed additional evidence in support of his claim that he does not owe this debt. This case is now ripe for review.

FINDINGS OF FACT

This is a debt collection action 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.

As a means of providing foreclosure relief, HUD advanced funds to the FHA to bring the Petitioner's mortgage current. In exchange for foreclosure relief, Petitioner executed a Subordinate Note ("Note") in the amount of \$21,775.56 in favor of the Secretary. Paragraph 3(A) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note.

Petitioner executed a Quit Claim Deed with co-debtor Lisset Chavez on February 16, 2022. On February 17, 2022, Lisset Chavez executed a Mortgage with Angel Oak Mortgage Solutions LLC.

On or about February 23, 2022, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. Upon payment in full or termination of FHA insurance on the primary note, Petitioner was to make payment to HUD on the Note at the U.S. Department of HUD c/o Novad Management Consulting, Shepard's Mall, 2401 NW 23rd St, Suite 1A1, Oklahoma City, OK or any other such place as HUD may designate in writing by notice to Petitioner. Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent.

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$21,775.56 as the unpaid principal balance as of October 31, 2023;
- (b) \$145.12 as the unpaid interest on the principal balance at 1.0% per annum;
- (c) \$1,363.17 as the unpaid penalties and administrative costs on the balance through October 31, 2023; and
- (d) interest on said principal balance from November 1, 2023, at 1.0% per annum until paid.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated October 4, 2023, was sent to Petitioner's last known address. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. To date, Petitioner has declined to do so. Also, as of November 28, 2023, Petitioner had not provided HUD with his current pay stub.

Based on the foregoing, the Secretary requests that the administrative wage garnishment be authorized at 15% of Petitioner's disposable pay which would result in a monthly repayment garnishment schedule of \$647.00.

DISCUSSION

Petitioner contends in his *Statement* that he is not responsible for the payment of the subject debt because he and co-debtor Lisset Chavez have been separated since August 2014; and further because he was removed from the deed on February 16, 2022. In addition, “refinancing was done solely by Lisset Chavez February 17, 2022” according to Petitioner. As support, Petitioner offers into evidence copies of a Quit Claim Deed executed by himself and co-debtor Lisset Chavez, dated February 16, 2022, and a Mortgage between co-debtor Lisset Chavez and Angel Oak Mortgage Solutions LLC, dated February 17, 2022. As correctly noted by the Secretary, neither of these documents serve as proof that the subject debt was satisfied or that Petitioner was released.

While the Petitioner may be divorced from his ex-spouse, neither the Secretary nor the lender was a party to the divorce action. For Petitioner not to be held liable for the full amount of the debt, there must either be evidence of 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). Paragraph 6 of the Note states, “If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed.” So it is unambiguous in the Note that Petitioner is jointly and severally liable for the debt.

Moreover, this Court has previously held that co-signers of a loan are jointly and severally liable to the obligation and, as a result, “a creditor may sue the parties to such obligation separately or together.” Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). Separation does not release Petitioner from his contractual obligation because the Secretary’s right to collect the subject debt in this case emanates from the terms of the Note. “[T]he Secretary may proceed against any co-signer for the full amount of the debt” because each co-signer is jointly and severally liable for the obligation. Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). So, Petitioner’s removal from the deed with co-debtor Lisset Chavez does not in effect remove Petitioner from his joint obligation to pay the subject debt. See Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007).

In the absence of a release from HUD that specifically discharges Petitioner from his obligation to repay the debt, he remains indebted to the Secretary in the amounts set forth above. See In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at 3 (Dec. 8, 2008). Therefore, this Court finds that Petitioner’s claim that he does not owe the subject debt fails for lack of proof and further finds that Petitioner shall repay the debt so claimed by the Secretary.

Perhaps as a recourse, Petitioner may seek to enforce, in the state or local court, the divorce decree or terms of separation that was granted against his co-debtor so that Petitioner may recover from her the monies paid to HUD by him in satisfaction of the subject debt. See Michael York, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3.

ORDER

Based on the foregoing, the Order issued on November 17, 2023 that imposed the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is hereby **VACATED**.

The Secretary is authorized to seek 15% of Petitioner's disposable pay in satisfaction of the debt due and now enforceable.

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.).