

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

In the Matter of:

WILLIE PHILLIPS,

Petitioner.

Docket No. 24-VH-0043-AG-034
(Claim No. 721020020)

February 6, 2025

DECISION AND ORDER

On November 17, 2023, Willie Phillips (“Petitioner”) filed a *Hearing Request* seeking a hearing concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the United States Department of Housing and Urban Development (“HUD”). 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 Secretary of HUD has designated the judges of this Office of Hearings and Appeals (“Tribunal”) to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth in 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

APPLICABLE LAW

The agency 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, a petitioner may 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, a petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, that the repayment schedule would cause an undue financial hardship to the petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.*

PROCEDURAL HISTORY

Petitioner filed the *Hearing Request* with evidence in support of Petitioner’s position. Then, this Tribunal issued a *Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”) staying the issuance of a wage withholding order until the issuance of this *Decision and Order*. On December 29, 2023, HUD filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable* as evidence of Petitioner’s indebtedness. To date, Petitioner has failed to provide evidence in response to the *Notice of Docketing* and subsequent *Order to*

Show Cause issued by this Tribunal on November 29, 2023 and, March 13, 2024, respectively. This case is now ripe for review.

FINDINGS OF FACT

Petitioner executed and delivered a Promissory Note, dated December 20, 2019, in favor of HUD in the principal amount of \$17,821.78 (“Note 1”). Petitioner also executed and delivered a Note, dated July 17, 2021, in favor of HUD in the principal amount of \$11,388.45 (“Note 2”).¹ The funds secured by the Notes were paid by HUD to Petitioner’s primary mortgage lender to bring Petitioner’s mortgage current and provide foreclosure relief to Petitioner.

The terms of Note 1 included Petitioner’s promise to pay, secured by a mortgage, deed of trust, or similar security instrument to protect the Secretary from losses if Petitioner defaulted on Note 1. Note 1 required payment on January 1, 2050, 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, or
- iv. The property is not occupied by the purchaser as his or her primary residence.

The terms of the Note 2 also included Petitioner’s promise to pay, secured by a mortgage, deed of trust, or similar security instrument to protect the Secretary from losses if Petitioner defaulted on Note 2. Note 2 required payment on July 1, 2051, 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.

On or about January 27, 2022, the Federal Housing Administration mortgage insurance on Petitioner’s primary mortgage was terminated, as the lender indicated that the primary mortgage was paid in full. Accordingly, the Notes became due. And HUD alleges that Petitioner is indebted to it in the following amounts:

- i. \$29,210.23 as the total unpaid principal balance as of November 30, 2023;
- ii. \$267.63 as the unpaid interest on the principal balance at 1.00% per annum as of November 30, 2023;

¹ Note 1 and Note 2 are collectively referred to as the “Notes.”

- iii. \$1,744.11 as the unpaid penalties and administrative costs as of November 30, 2023; and
- iv. interest on said principal balance from December 1, 2023 at 1.00% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated June 5, 2023, was sent to Petitioner. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. Petitioner has not entered into a written repayment agreement with HUD.

HUD proposes a wage garnishment repayment schedule of \$867.00 per month,² or an amount equal to 15% of Petitioner’s disposable income. The Secretary requests that this Tribunal find Petitioner’s debt past due and legally enforceable and the Secretary’s proposed repayment schedule fair.

DISCUSSION

Petitioner argues that he does not owe the debt because Truly Title improperly performed the title search that resulted in the existence of the debt and, as a result, should be held responsible for the subject debt. Petitioner offers as evidence a copy of an Authorization to Release Information form previously sent to Truly Title.

Based on the record, the Tribunal has determined that Petitioner has failed to meet his burden of proof. Petitioner relies solely on the premise that the title company’s alleged negligence resulted in the debt now owed, but that assumption is unreasonable in this case. “A third party’s error or negligence does not normally relieve Petitioner of liability for the debt... Petitioner’s obligation to pay the debt derives from the terms of the Note.” Stephond West, HUDOHA No. 17-AM-0026-AG-006 (March 14, 2018), (citing Bryan McClees, HUDOHA No. 17-AM-0037-AO-010 (February 14, 2018) and Cydine A. Taylor, HUDOHA No. 14-AM-0063-AO-005 (October 22, 2014); see also, Judith Herrera, HUDOA No. 12-M-CH-AWG27 (July 12, 2012) (finding that a statement to Petitioner by a title company that “all was okay, and Petitioner did not owe debt” as a statement of fact was insufficient as proof that HUD had been paid). Likewise, any action or inaction by Truly Title in this case is irrelevant to whether the subject debt is owed or not. The onus falls on Petitioner and not on a title company or even a primary lender to ensure that the subject debt is paid in full.

Furthermore, HUD’s right to collect the subject debt emanates from the terms of the Notes, as agreed between Petitioner and HUD and not as communicated between Petitioner and Truly Title.³ See In re Bruce R. Smith, HUDOA No. 07-A-CH-AWG11 (June 22, 2007); In re Scott Wassam, HUDOHA No. 24-VH-0009-AG-005 (Dec. 5, 2024). For Petitioner not to be held liable

² HUD attempted to obtain Petitioner’s income information but was unsuccessful. HUD’s proposed repayment schedule will liquidate the debt in approximately three years, as recommended by the Federal Claims Collection Standards.

³ This *Decision and Order* does not however preclude Petitioner from independently seeking reimbursement from a third party.

for the full amount of the debt, Petitioner must produce evidence of either a release in writing directly from HUD that explicitly relieves Petitioner's obligation to HUD under the Notes, "or valuable consideration accepted by the lender" indicating intent to release. See, e.g., *In re Cecil F. and Lucille Overby*, HUDOA No. 87-1917-G250 (Dec. 22, 1986); *In re John Tipton*, HUDOHA No. 23-VH-0153-AO-083 (Sept. 12, 2024). To date, Petitioner has failed to meet the burden of proof required by failing to offer evidence of a written release or exchange of valuable consideration. The Tribunal therefore finds Petitioner's claim fails for lack of proof and further finds that the subject debt remains enforceable against Petitioner.

If Petitioner experiences materially changed financial circumstances in the future, Petitioner is entitled to seek reassessment of the repayment schedule. 31 C.F.R. § 285.11(k).⁴

ORDER

Based on the foregoing, the 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 up to 15% of Petitioner's disposable pay by administrative wage garnishment in satisfaction of the debt due. It is:

FURTHER ORDERED that the *Notice of Docketing* imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

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.*).

⁴ The U.S. Department of the Treasury has authority to negotiate and accept settlement offers related to the subject debt and can be reached by contacting HUD Counsel assigned to this matter.