

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

In the Matter of:

KYLE BAILEY,

Petitioner.

Docket No. 25-SG-0056-AG-043
(Claim No. 721026678)

June 2, 2025

DECISION AND ORDER

This matter is before the Tribunal upon a *Hearing Request* filed by Kyle Bailey (“Petitioner”) on November 8, 2024. In the *Hearing Request*, Petitioner denied owing a debt to the United States Department of Housing and Urban Development (“HUD”) that HUD seeks to collect by garnishing Petitioner’s wages. Petitioner also disputed the amount of the debt that is claimed to be owed. Although Petitioner disputed the amount and existence of the debt, he did not provide any documentary evidence or explanation with his *Hearing Request*.

On November 13, 2024, 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* (“Secretary’s Statement”) on November 26, 2024.¹ Petitioner, however, did not comply with the Tribunal’s order to present evidence.

Having not received any response from Petitioner, this Tribunal issued an *Order to Show Cause* on January 2, 2025, wherein Petitioner was again ordered to file documentary evidence in support of his position. Petitioner failed to respond and, to date, has not presented any evidence or argument to the 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

¹ The *Secretary’s Statement* was amended that same day to correct a scrivener's error.

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 the 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). After HUD has met its burden, the debtor must present by a preponderance of 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

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner’s FHA-insured first mortgage lender to bring it current. In exchange for such funds, Petitioner executed and delivered to the Secretary a Promissory Note (“HUD Note”), dated January 17, 2022, and in the principal amount of \$42,688.48.²

The terms of the HUD Note required payment on February 1, 2052, or 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 HUD Note also required that payment to be made to “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 November 24, 2023, the FHA Insurance on Petitioner’s primary mortgage was terminated, as the lender indicated that the primary mortgage was paid in full. By the terms of

² Although the HUD Note bears a document date of January 17, 2022, Petitioner did not sign the HUD Note until February 16, 2022.

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 25, 2024, a Notice of Intent to Initiate Wage Garnishment Proceedings (“Notice”) was sent to Petitioner’s last-known address. 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. \$42,688.48 as the unpaid principal balance as of October 31, 2024;
- b. \$711.40 as the unpaid interest on the principal balance at 4.0% per annum through October 31, 2024;
- c. \$2,647.74 as unpaid penalties and administrative costs as of October 31, 2024; and
- d. interest on said principal balance from November 1, 2024 at 4.0% per annum until paid.

DISCUSSION

HUD claims Petitioner owes a valid debt to HUD and proposes a repayment schedule in the amount of \$1,279.00 per month or in an amount equal to 15% of Petitioner’s disposable pay.³ 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 Petitioner received, and that payment would be made 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 November 24, 2023, 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.

The 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 or that the amount of the debt is incorrect. In fact, beyond checking two boxes on his *Hearing Request* form, Petitioner has not presented any argument or basis for review of HUD’s intent to garnish his wages. This Tribunal has consistently held that “assertions without evidence are not sufficient to show that

³ HUD proffers that a repayment schedule of \$1,279.00 per month would liquidate the debt in approximately three years as recommended by the Feder Claims Collections Standards.

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, the 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, 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 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,

A handwritten signature in black ink, appearing to read 'Sandra W. Gluvna', written over a horizontal line.

Sandra W. Gluvna
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.).