

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

In the Matter of:

MICHAEL R. BRIDGES,

Petitioner

HUDOHA No: 13-AM-0125-AG-054

Claim No. 2007327110B

August 15, 2013

DECISION AND ORDER

On May 29, 2013, Michael Bridges (“Petitioner”) requested a hearing 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”). 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 by debtors.

The Secretary of HUD has designated the administrative judges of this Office to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This case is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. Pursuant to 31 C.F.R. § 285.11(f)(4), on May 29, 2013, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), issued May 29, 2013.)

Background

On or about March 18, 1994, Petitioner executed and delivered an Installment Sales Contract and Security Agreement (“Note”) to Augusta Housing Center in the amount of \$55,195.00, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Secretary’s Statement (“Sec’y Stat.”), ¶ 2, filed June 25, 2013; Ex. A, Note.) The Note was assigned by Augusta Housing Center to Home Owners Funding Corp. of America. (See Sec’y Stat., ¶ 3; Note, p. 4.) Thereafter, Home Owners Funding Corp. of America assigned the Note to Oakwood Acceptance Corporation. *Id.* Subsequent to this assignment, Oakwood Acceptance Corporation was defaulted as an issuer of Mortgage Backed Securities due to its failure to comply with the Government National Mortgage Association’s (“GNMA”) Mortgage Backed Securities Program requirements. (Sec’y Stat., ¶ 4;

Ex. B, Declaration of Leslie A. Meaux¹, (“Meaux Decl.”), ¶ 4.) Upon default by Oakwood Acceptance Corporation, all of its rights, title, and interest in Petitioner’s loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Oakwood Acceptance Corporation and GNMA. (See Sec’y Stat., ¶ 5; Meaux Decl., ¶ 4.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (See Sec’y Stat., ¶ 6; Meaux Decl., ¶ 5.)

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. (Sec’y Stat. ¶ 7; Meaux Decl. ¶ 6.) As a result, the Secretary alleges that Petitioner is indebted to the Secretary in the following amounts:

- a) \$33,185.41 as the unpaid principal balance;
- b) \$25,590.93 as the unpaid interest on the principal balance through June 20, 2013;
- c) \$6,535.14 as the unpaid penalty; and,
- d) interest, penalty, and administrative costs on said principal balance until paid.

(Sec’y Stat., ¶ 7; Meaux Decl., 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Garnishment Notice”), dated April 22, 2013, was mailed to Petitioner, in accordance with 31 C.F.R. § 285.11(e). (Sec’y Stat., ¶ 8; Meaux Decl., ¶ 7.) The Garnishment Notice afforded Petitioner the opportunity to enter into a written repayment agreement, as required by 31 C.F.R. § 285.11(e)(2)(ii). (Sec’y Stat., ¶ 9; Meaux Decl., ¶ 7.) The record does not show that Petitioner has entered into such an agreement. See *id.* Accordingly, the Secretary proposes a repayment schedule of 10% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 12; Meaux Decl., ¶ 9.)

Discussion

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, 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). Additionally, Petitioner may present evidence that the terms of the 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.*

As evidence of Petitioner’s indebtedness, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note signed by Petitioner and the sworn declaration of the Acting Monitoring Director of the Mortgage Backed Securities Monitoring Division of GNMA at HUD. (See Sec’y Stat., Ex A, Ex. B.) Accordingly, the Court finds the Secretary has met his initial burden.

¹ Leslie A. Meaux is the Acting Monitoring Director of the Mortgage Backed Securities Monitoring Division of the Government National Mortgage Association at HUD.

Petitioner does not dispute the existence of the debt. Rather, Petitioner claims he does not owe the full amount of the debt because “This is a debt from a previous marriage about 20 years ago.” (Pet’r’s Hr’g Req., filed May 29, 2013.)

In order to demonstrate that Petitioner is not liable for the debt, he must file evidentiary support for the allegation that HUD released him from liability. See Samples v. Kamp-N-Go Sys., Inc., 228 S.W.2d 360, 324 (Ga. Ct. App. 1976); see also Eric and Eliza Rodriguez, HUDOHA No. 13-AM-0061-AG-023 (Apr. 17, 2013) (citing Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (Mar. 23, 2005) (Evidence of repayment of a debt must be in the form of either (1) a written release from HUD showing that petitioners are no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release them from their obligation.)); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (Feb. 28, 1986).

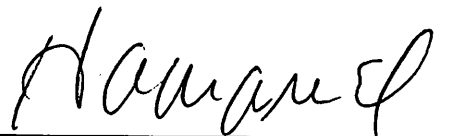
Petitioner’s assertion that he does not owe the full amount because the debt is from a previous marriage is without merit. Pursuant to the terms of the Note, as co-signer, Petitioner is jointly and severally liable for the Note. (See Sec’y Stat. ¶ 11; Ex. A.) Further, a Settlement Agreement only determines the rights and liabilities between Petitioner and his ex-wife. See Thompson v. Thompson, 256 S.E.2d 454, 455 (Ga. 1979); see also Cynthia Abernethy, HUDBCA No. 04-D-NY-AWG39 (Mar. 25, 2005) (citing Wendy Kath, HUDBCA No. 89-4518-L8 (December 26, 1989) (A divorce decree purporting to release Petitioner from this joint obligation does not affect the claims of an existing creditor unless the creditor was a party to the action.)). Since HUD was not a party to the divorce proceeding between Petitioner and Petitioner’s ex-wife, Petitioner’s divorce decree does not absolve him of his debt to HUD.

Accordingly, the Court finds that Petitioner’s arguments fail as a matter of law and that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

ORDER

For the reasons set forth above, the Order dated May 29, 2013, imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the maximum amount of 15% of Petitioner’s disposable pay.



H. Alexander Manuel
Administrative Judge