

CORRECTED VERSION  
(shaded portions only)

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

In the Matter of:

**Jessie J. Bonvillian,**

Petitioner.

15-VH-0056-AG-020

78-0765902-OA

November 16, 2016

**DECISION AND ORDER**

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hr’g. Req.*”) filed by Jessie J. Bonvillian (“Petitioner”), on April 2, 2015, 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”).

Pursuant to 24 C.F.R. § 17.81(a), on April 3, 2015, the Court stayed the issuance of an administrative offset of any federal payment due to Petitioner until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”). Petitioner filed a *Statement* (“*Pet’r.. Statement*”), along with documentary evidence, on April 15, 2015. After two requests for an extension of time, on June 12, 2015, the Secretary filed a *Secretary’s Statement*, which included documentation in support of his position. *Secretary’s Statement* (“*Sec’y. Statement*”). On August 29, 2016, the Secretary filed a *Secretary’s Supplemental Statement* (“*Sec’y. Supp. Statement*”). This case is now ripe for review.

**JURISDICTION**

The Office of Hearings and Appeals has jurisdiction to determine whether Petitioner’s debt is past due and legally enforceable pursuant to 24 C.F.R. §§ 17.61 *et seq.* The administrative judges of this Court, in accordance with the procedures set forth in 24 C.F.R. §§ 17.69 and 17.73, have been designated to conduct a hearing to determine, by a preponderance of the evidence, whether the alleged debt is past due and legally enforceable.

**BACKGROUND**

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A, as a result of a defaulted loan that was insured against non-payment by the Secretary. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720A), authorizes federal agencies to use administrative offset as a mechanism for the collection of debts allegedly owed to the United States government.

On or about July 30, 2009, Petitioner executed and delivered a Manufactured Home Promissory Note, Security Agreement and Disclosure Statement ("Note") with Vanderbilt Mortgage and Finance, Inc. in the amount of \$43,280.44. *Sec'y. Statement*, ¶ 2; Ex. 1, *Note*. The *Note* was insured against nonpayment by the Secretary. *Sec'y. Statement*, ¶ 3; Ex. 3, *Assignment Contract*. After default by Petitioner on July 31, 2013, Vanderbilt Mortgage and Finance, Inc. assigned the Note to HUD, under the regulations governing the Title I Insurance Program. *Sec'y. Supp. Statement*, ¶ 4.

HUD's attempts to collect this alleged debt from Petitioner have been unsuccessful. *Sec'y. Statement*, ¶ 5; Ex. 2, ¶ 4. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$23,908.36 as the unpaid principal balance as of July 31, 2016;
- b) \$1,588.05 as the unpaid interest on the principal balance at 1 % per annum through July 31, 2016;
- c) \$301.54 as the unpaid penalties and administrative costs as of July 31, 2016; and
- d) interest on said principal balance from August 1, 2016, at 1 % per annum until paid.

*Sec'y. Supp. Statement*, ¶ 3; *Dillon Decl.*, ¶ 3.

On March 3, 2015, a *Notice of Intent to Initiate Administrative Wage Garnishment Proceedings* ("Notice") was mailed to Petitioner. *Sec'y. Statement*, ¶ 6.

### DISCUSSION

Petitioner does not dispute that he owes the debt and admits that he made installment payments on the *Note* prior to the *Note* going into default. *Sec'y. Statement* ¶ 9, Ex. 2-A. However, Petitioner challenges the debt amount claimed by the Secretary and states that (i) he is "only responsible for 50 % of the debt because the *Note* was a joint-debt with Consuela Bonvillian" and that "\$22,000 for the repossession of Petitioner's mobile home should be applied to the outstanding debt;" and, (ii) proposed repayment terms for garnishment would cause significant financial hardship to Petitioner. As support, Petitioner produced copies of his bi-weekly earnings statement, money orders of payments made thus far towards the alleged debt, a newspaper advertisement of the property related to the subject debt, and a Sheriff's Second Amended Writ of Seizure and Sale.

First, Petitioner states that "I feel I do not owe all of this debt because this is a joint debt and marital debt with Consuela Bonvillian. I do though feel obligated for 50% of the debt." *Pet'r. Statement* ¶ 2. Petitioner also claims that the amount received from the repossession of his property by Vanderbilt Mortgage, \$22,000.00, should be credited towards the outstanding debt. *Pet'r. Stat.* ¶ 8. Petitioner only submitted, as proof of amount received, a copy of the Sheriff's Second Amended Writ of Seizure and Sale.

Where a spouse is jointly and severally liable with a former spouse for repayment of the debt, the Secretary may proceed against any co-signer for the full amount of the debt. Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09, at 2 (Jan. 30, 2003). For Petitioner to not be held

liable for the full amount of the debt, there must be either 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). Petitioner has failed to produce sufficient documentary evidence to establish a valid release, so as a result, the Court finds that the Secretary has the right to enforce this debt obligation against Petitioner because he remains jointly and severally liable for the full debt amount claimed by the Secretary.

Furthermore, upon reviewing the record and the evidence introduced by the Secretary, the Court is also convinced that Petitioner's claim that the amount received from the repossession should be credited towards the alleged debt. But, the Court is not convinced that the amount of the alleged credit should be \$22,000.00 as claimed by Petitioner.

In response to Petitioner's allegation, the Secretary stated that the debt was credited in the amount of \$19,959.00 towards the alleged debt after the sale of the property. *Sec'y's Supp. Stat.* ¶ 5. According to the Secretary, pursuant to guidelines set forth in 24 C.F.R. 201.51(b)(3)<sup>1</sup> Petitioner's debt was credited with the best price obtainable ("BPO"). Based on the appraised value of Petitioner manufactured home before repairs and the actual sales price, the BPO was \$19,959.00. *Sec'y's Supp. Stat.* ¶ 5. As support, the Secretary provided copies of the Closing Agreement with Vanderbilt Mortgage indicating that the property sold for \$16,000; the Statement of Appraised Value estimating the market value of the home in present condition to be \$19,959; and a claim calculation of Petitioner's debt at the time of default with the \$19,959.00 BPO credit applied. *Sec'y's Supp. Stat., Ex. 1C; Ex. 1D; Ex. 1E.*

The record of evidence supports the Secretary's position. Vanderbilt Mortgage obtained title to the property securing a manufactured home loan by repossession, and the BPO for the property was appraised at \$19,959. *Sec'y's Supp. Stat., Ex. 1D.* At the date of default, Petitioner was indebted to the Secretary in the amount of \$42,387.19. *Sec'y's Supp. Stat., Ex. 1, ¶ 8.* After crediting the \$19,959 BPO to Petitioner's debt, as of July 31, 2016, Petitioner became indebted to the Secretary for the remaining balance of \$22,428.19. Thus, based upon the evidence, the Court finds that Petitioner remains contractually obligated to pay the balance of the alleged debt as claimed by the Secretary.

Next, Petitioner states that the proposed repayment schedule for the subject debt would create a financial hardship for him. More specifically, Petitioner claims "lack of funds – hardship." *Hr'g. Req.* The Secretary states, on the other hand, that Petitioner's allegations of

---

<sup>1</sup> § 201.51 Proceeding against the loan security.

(b) *Manufactured home loans.*

(3) The lender shall obtain a HUD-approved appraisal of the property as soon after repossession as possible, or earlier with the permission of the borrower. This appraisal shall be performed on the homesite, unless the site owner requires that the home be removed before the appraisal can be performed, and it should reflect the retail value of comparable manufactured homes in similar condition and in the same geographic area where the repossession occurred. When the manufactured home is without hazard insurance and has sustained, at any time prior to the sale or disposition of the home, damage which would normally be covered by such insurance, the lender shall report this situation in submitting an insurance claim, and the appraised value shall be based upon the retail value of comparable homes in good condition and in the same geographic area, without any deduction for such damage.

financial hardship should not be considered in this case. As support the Secretary states, in error, that “evidence of hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past due and enforceable. *Sec’y. Stat.* ¶ 6. The Secretary is reminded that pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present, in an administrative wage garnishment case, evidence that the terms of the proposed repayment schedule would cause a financial hardship. But in this case, Petitioner failed to comply with the Court’s subsequent Order to produce such necessary evidence that likely could have proved his claim of financial hardship more sufficiently.

Without the additional evidence from the Petitioner to refute or rebut the evidence presented by the Secretary, the Court is not equipped to determine whether the alleged debt would have created a financial hardship for Petitioner pursuant to 31 C.F.R. § 285.11(f)(8)(ii). See also Mary Baker, HUBCA No. 05-D-NY-AWG06 (Mar. 23, 2005). Therefore, the Court finds Petitioner’s claim of financial hardship fails for lack of proof.

Petitioner next states “On 9/10/14, I received a Demand [N]otice of \$25,038.25. And on 11/03/14, I received a Notice of Intent to Collect for \$25,078.09.” Petitioner adds that “On 1/30/15, I received a letter from Department of Treasury stating I owed \$34,123.70. Why did the debt jump up from \$25,038.25 I had agreed with Luis Madera, a HUD representative, on payments for \$25,078.09?” As support, Petitioner introduced into evidence copies of a *Demand Notice*, dated September 10, 2014, that reflected a debt amount of \$25,038.25; and, a *Notice of Intent to Initiate Administrative Wage Garnishment Proceedings*, dated March 3, 2015, that reflected a debt amount of \$34,149.20. The Court has reviewed the documentation submitted by Petitioner and determined that the *Demand Notice* was for an administrative offset action, while the *Notice of Intent to Initiate Administrative Wage Garnishment Proceedings* was obviously for the instant proceeding.

The Court has already determined the enforceability of the alleged debt by means of an administrative garnishment because this hearing is an administrative wage garnishment hearing. Petitioner has the right to file, upon receipt of a Demand Notice for Offset, a separate request for hearing for the Court to review the documentary evidence in support of his position in relation to a separate administrative offset proceeding. However, the instant hearing is not the appropriate forum to address that issue, and as such, is not relevant to the outcome of this administrative wage garnishment hearing. *See* 31 C.F.R. § 285.11(f)(8)(ii). *Donald McMillan*, HUDOA No. 09-H-NY-AWG03 (April 6, 2009).

As a final point, Petitioner states that “In November or December 2014, I did speak to Luis Madera, a HUD representative, and agreed on payment arrangement for a balance of \$25,078.09 but received no correspondence back.” While Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Michael DeMarco, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

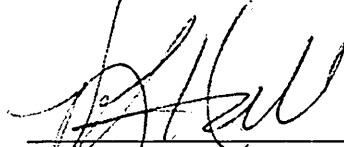
**ORDER**

For the reasons set forth above, the Court finds that the debt that is the subject of this proceeding is past due and legally enforceable in the amount alleged by the Secretary.

Based on the foregoing, the *Order* imposing the stay of referral in this matter to the U.S. Department of 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 amount so claimed by the Secretary.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read 'V. Hall', is written over a horizontal line.

Vanessa L. Hall  
Administrative Judge

**Review of determination by hearing officers.** A motion for reconsideration of the Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 30 days of the date of the written decision, and shall be granted only upon a showing of good cause.