

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

In the Matter of:

**TRICIA E. MARTIN,**

Petitioner.

16-AM-0112-AG-032

721008207-0A

September 14, 2018

**DECISION AND ORDER**

On July 3, 2016, Tricia E. Martin, ("Petitioner") filed a Request for Hearing concerning the amount, enforceability, or payment schedule 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 garnishments as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the administrative judges of this Office of Hearings and Appeals 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 at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

**BACKGROUND**

On or about November 4, 2011, Petitioner sought financial assistance from HUD to help her avoid possible foreclosure of her mortgage with her primary lender, U.S. Bank Home Mortgage of Owensboro, KY ("U.S. Bank or primary lender"). HUD loaned Petitioner the sum of \$8,0007.23 to help her avoid defaulting on her mortgage with U.S. Bank. (*See* Secretary's Statement, ("Sec'y Stat."), ¶ 4; Exh. A, Declaration of Brian Dillon, ("Dillon Decl.") Director of Asset Recovery Division, HUD Financial Operations Center, ¶ 4.) Petitioner executed and duly delivered a subordinate note ("Note"), evidencing this loan to HUD. (*See* Sec'y Stat., Exh. B, the Note, dated November 4, 2011). Under the terms of the Note, Petitioner was to pay the principal amount of the unpaid balance on the Note until it was paid in full. (*See* Sec'y Stat., Ex. B, ¶2). The Note cited specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable - one of which was when Petitioner's underlying mortgage to her primary lender was refinanced or otherwise paid in full. (*See* Sec'y Stat., Ex. B, ¶¶ 4(A)(i) & (iii)).

On or before April 21, 2015, Petitioner's primary lender notified HUD that Petitioner's underlying mortgage with U.S. Bank had been paid in full. This automatically triggered both the

termination of U.S. Bank's insurance contract with the Federal Housing Administration, as well as the provisions of ¶ 4(A)(i) & (iii) of the Note, requiring Petitioner to pay the full amount owed under the Note to HUD. HUD, thereafter, made its demand upon Petitioner to pay the amounts owed, but Petitioner failed to do so. As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$4,951.22 as the unpaid principal balance as of July 19, 2018;
- b) \$6.45 as the unpaid interest on the principal balance at 1% per annum through July 19, 2018;
- c) \$438.65 as the unpaid penalties and administrative costs through July 19, 2018; and
- d) interest on said principal balance at 1% per annum until paid.

(See Secretary's Second Supplemental Statement, dated July 24, 2018 ¶ 4; Supplemental Declaration of Brian Dillon ¶ 7).

According to the Secretary's calculations, the above balances take into account the amounts later withheld from Petitioner pursuant to government collection actions related to the alleged debt in this case. Those amounts are \$1,391.81, withheld via administrative wage garnishments between June 1, 2016 and August 30, 2016; and a total of \$2,795.00 withheld via treasury offsets on February 23, 2017 and June 7, 2018. (See Second Supplemental Secretary's Statement ¶ 4, Supplemental Dillon Declaration ¶ 7).

On or about April 14, 2016, a Notice of Intent to Initiate Wage Garnishment Proceedings ("Notice") was mailed to Petitioner. (See Sec'y Stat., ¶ 10; Dillon Decl., ¶ 6). Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was given an opportunity to enter into a written repayment agreement under terms acceptable to HUD (See Sec'y Stat., ¶ 11, Dillon Decl., ¶ 7). Petitioner provided a copy of her most recent pay statement for the pay period ending June 25, 2016 (See Sec'y Stat., ¶ 19; Dillon Decl., ¶ 10). As a result, the Secretary proposes a repayment schedule in the amount of \$110.36 bi-weekly or in the alternative, the Secretary proposes a repayment schedule of 15% of the Petitioner's disposable income. (See Sec'y Stat., ¶ 19; Dillon Decl., ¶ 10).

## DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. (See 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. (See 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 hardship to Petitioner, or that the alleged debt is legally unenforceable. *Id.*

As evidence of the Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement*, the *Secretary's Supplemental Statement*, and the *Second Supplemental Secretary's Statement* ("2nd Sec'y Stat."), together with accompanying sworn declarations by Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center; copies of the Note, and

accompanying notices and documents. (See Sec'y Stat., Ex. A; Ex. B; Ex. C; 2nd Sec'y Stat., Ex. A). Accordingly, the Court finds that the Secretary has met his initial burden of proof.

Petitioner seeks to establish her proof by claiming that she does not owe the alleged debt in this case. She has filed numerous documents consisting primarily of arguments and denials, but little in the way of proof. The correspondence between her and HUD officials that she filed, made reference to her primary mortgage with U.S. Bank, and her Note with HUD, but did not demonstrate that the Note was ever paid.

In Petitioner's *Request for Hearing*, dated July 3, 2016, she states that she "has no knowledge of [the alleged debt in this case and was never informed of any separate mortgage outside of the ones [sic] associated with [the mortgage with U.S. Bank]." However, this argument is belied by the fact that Petitioner signed the Note itself, and she has come forward with no evidence to show that she lacked capacity to understand the fact that she signed it. (See Sec'y Stat., ¶ 4, Ex. A, Dillon Decl. ¶ 4, Ex. B, Note).

In her *Request for Hearing*, Petitioner attached three mortgage security instruments, including a subordinate mortgage securing her Note with HUD, along with her first mortgage and loan modification agreement with U.S. Bank. She also filed a loan payoff statement from U.S. Bank, dated March 31, 2015, that pertained to her primary mortgage with U.S. Bank and reflected a balance of \$83,495.99. Finally, she filed a Release of Mortgage, dated July 7, 2015, which, by its own terms, strictly pertained to Petitioner's primary mortgage with U.S. Bank, and not to the Note that she was obligated to repay to HUD.

Petitioner filed additional correspondence on February 16, 2017, March 4, 2017, and March 21, 2017, that contained repeated denials that Petitioner is indebted to the Department. She further argued that she was denied due process and proper notice when her tax refund was offset in connection with the alleged debt in this case. The Court takes administrative notice that Petitioner's offset proceeding was conducted entirely separate and apart from this administrative wage garnishment proceeding. The Court is unaware, and Petitioner has failed to come forward with, any evidence to substantiate Petitioner's claim that those proceedings were conducted without affording her proper notice and the due process to which she is entitled. I, therefore, find Petitioner's claim that she was denied proper notice and due process in any ancillary offset proceeding to be without merit.

Petitioner has not brought forth any evidence to show that the amounts claimed by the Secretary were incorrectly calculated. This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or enforceable." (See *Michael R. Bridges*, HUDOHA No. 13-AM-0125-AG-054 (August 13, 2013); *Eric and Eliza Rodriguez*, HUDOHA No. 13-AM-0061-AG-023 (April 17, 2013)(citing *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005); *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Here, Petitioner has failed to come forward with any appreciable evidence to meet her burden of proof.

The Court notes, for the record, that the Secretary has given thorough treatment to Petitioner's claims and appeal arguments.

In accordance with Judge Manuel's *Fourth Order for Documentary Evidence* dated June 29, 2018, I have reviewed Petitioner's letter of July 11, 2018 and the documentation that was attached to said letter. The documents submitted by Petitioner with her July 11, 2018 letter are the same documents that were submitted by Petitioner when her hearing request was docketed back on July 6, 2016. Prior to that, Petitioner also submitted these documents in June 2016. I responded to Petitioner's initial submission of this documentation to HUD in an email dated June 14, 2016. My email states in part, the documents you submitted do not show that you paid HUD when you sold your home. They do show that you paid the balance due on your mortgage to US Bank. While we acknowledge that both your US Bank loan and your HUD note/mortgage have the same FHA reference number, they are clearly two separate and distinct loans with different dollar amounts, different dates and different lenders.

*Supplemental Declaration of Brian Dillon*, ¶ 3. (citations omitted).

The Court finds the Director's diligence in analyzing Petitioner's claim, and the Director's explanation of that review to be more than sufficient to prove that Petitioner is indebted to the Department in the amounts claimed by the Secretary.

In appropriate cases, this Court has the discretion to modify the Secretary's proposed repayment schedule where there is a *bona fide* showing of financial hardship. 31 C.F.R. §285.11(e)(8)(ii). However, we have been reluctant to exercise this discretion in cases where there is insufficient documentary evidence of necessary household expenses. Petitioner has claimed financial hardship but has only filed limited receipts showing monthly payment of rent-\$800, Oates Energy-\$32.93, Duke Energy-\$42.66, Sprint-\$72.41, FL. Med. Group-\$6, Amscot Corp.-\$32.00, and BJ Adams Tax-\$17. Since Petitioner's car was repossessed, the auto and auto insurance payments are not allowed. This totals \$1,003 per month, or \$502 bi-weekly.

However, it is customary for this Court to take into account expenses necessary to run any household, such as expenses for basic food, clothing, and shelter. *Michelle Edwards*, HUDOHA No. 12-M-CH-AWG23, at 3; *In re: Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004). Accordingly, the Court will credit the extra sums of \$300 per month for food, and \$150 for bus/taxi transportation in lieu of a car payment, insurance, and gas. This brings Petitioner's total monthly expenses to \$1,453.00

By the Secretary's calculations, Petitioner has a net disposable monthly income of \$1,471.46. Therefore, I find that the proposed repayment amount of 15% of disposable pay would indeed create undue financial hardship for Petitioner at this time. However, I find that a 5% garnishment would allow repayment of the debt without causing undue hardship.

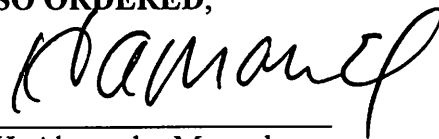
If Petitioner seeks to negotiate a repayment schedule with the Department she should be aware that this Court only has the authority to make a "determination of whether the debt is enforceable and past due." (See *Edgar Joyner Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005). This Court does not have the authority to establish "a debtor's repayment amount or a schedule of payments." *Id.* As such, 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." *Id.* If Petitioner wishes to discuss a payment plan, Petitioner may discuss the matter with Michael DeMarco the Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859 or write to HUD Financial Operation Center, 50 Corporate Circle, Albany, NY 12203-5121. Petitioner is also entitled to seek reassessment of this financial hardship determination in the future in the event that she experiences materially-changed financial circumstances. See 31 C.F.R. §285.11(k).

### ORDER

For the reasons set forth above, the Order 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 amount of 5% of Petitioner's disposable pay for each pay period.

SO ORDERED,



H. Alexander Manuel  
Administrative Judge