

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

In the Matter of:

Michael Parker,

Petitioner.

17-AM-0176-AG-056

721010362

July 25, 2018

DECISION AND ORDER

On August 23, 2017, Michael Parker (“Petitioner”) requested a 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 “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 allegedly owed to the United States government.

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. On September 5, 2017, the Court issued a Notice of Docketing, Order and Stay of Referral (“Notice of Docketing”) that stayed the issuance of a wage garnishment order until the issuance of this *Decision and Order*. See 31 C.F.R. § 285.11(f)(4).

Background

On or about March 12, 2009 and June 16, 2014, Petitioner executed and delivered to the Secretary two Partial Claims Promissory Notes (collectively, the “Notes”) in the amounts of \$7,071.15 and \$24,916.01, respectively, in exchange for foreclosure relief. (Secretary’s Statement (“Sec’y Stat.”) ¶¶ 2-3, filed November 21, 2017; Ex. 2, Declaration of Gary Sautter¹ (“Sautter Decl.”).) The Notes described four events that would make the debt immediately due and payable. (Sec’y Stat., ¶ 4; Ex. 1, Notes ¶ 3.) One of those events was the payment in full of the primary note and related mortgage. (Sec’y Stat., ¶ 4; Ex. 1, ¶ 3.) On or about October 31, 2016, the Secretary was informed that the primary note and mortgage had been paid in full. (Sec’y Stat., ¶ 6; Ex. 2, ¶ 3.)

¹ Mr. Sautter is the Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center.

HUD states that it has attempted to collect on the Notes from the Petitioner, but without success. (Sec'y Stat., ¶ 7; Sautter Decl. ¶ 4.) Consequently, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a. \$31,987.16 as the combined unpaid principal balance as of August 30, 2017;
- b. \$159.90 as the unpaid interest on the principal balance at 1% per annum through August 30, 2017;
- c. \$1,960.96 as the unpaid penalties and administrative costs as of August 30, 2017; and
- d. Any interest on said principal balance from August 31, 2017, at 1% per annum until paid.

(Sec'y Stat., ¶ 8; Sautter Decl., ¶ 4.)

On July 27, 2017, HUD sent Petitioner a Notice of Intent to Initiate Administrative Wage Garnishment. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 5.) Pursuant to 31 C.F.R. 285.11(e)(2)(ii), Petitioner was given an opportunity to enter into a written repayment agreement under the terms acceptable to HUD, but declined to enter into such an agreement. (Sec'y Stat., ¶ 10; Sautter Decl., ¶ 6.) Based upon the income information Petitioner provided to HUD, the Secretary proposes a repayment schedule of \$254.05 biweekly, or an amount equal to 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 13; Sautter Decl., ¶ 7.)

Discussion

I. Obligation to Pay Debt

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. *Id.* § 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 the sworn declaration of Gary Sautter, and a copy of the Notes signed by Petitioner. (See Sec'y Stat.; Ex. 1; Ex. 2.) Accordingly, the Court finds that the Secretary has met his initial burden of proof.

Petitioner disputes the existence and amount of the debt. He asserts that he attempted to refinance his primary mortgage, not to acquire an additional loan from HUD. (Petitioner's Hearing Request, ("*Pet'r's Hr'g Req.*") dated August 23, 2017.) This Court has consistently found that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable." *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-H-NY-T300 (July 3, 1996)). Because the Secretary has met his initial burden of proof establishing existence and amount of the debt, Petitioner must show either a written release from HUD or evidence of valuable consideration accepted by HUD from Petitioner to prove that his debt owed to the Secretary has been satisfied. See *Hedieh Rezei*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). No

documents submitted by Petitioner reflect the release of Petitioner's debt to HUD or in any way reflect that such debt has been paid off in full or partially. Further, in his letter to the Court, Petitioner concedes to "[r]ealizing that an amount of more than \$31,000 was due once the mortgage with Wells Fargo was paid off," reflecting an admission to the existence and amount of the alleged debt. (Petitioner's Documentary Evidence ("Pet'r's Doc. Evid., Feb. 2018"), filed February 12, 2018.) Therefore, the Court finds that Petitioner's debt to HUD is past due and legally enforceable.

Petitioner's statements reflect that he did not understand the partial claims process. However, by signing the note, Petitioner is bound by its clear terms. "A person who signs a written contract is bound by its terms regardless of his or her failure to read and understand its terms." Hedeih Redzai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004) (citing Betaco, Inc. v. Cessna Aircraft Co., 32 F.3d 1126, 1136 (7th Cir. 1994)). Petitioner's claim that he does not owe the debt stems from his misunderstanding of the mortgage support provided by his lender. Petitioner sought to refinance his primary mortgage with his lender, and in doing so believed that he was extending the term of his primary loan, not acquiring new loans from HUD. Petitioner stated, "I would never [have] signed the paperwork knowing that if I payed [sic] my house off I would have to pay back lump sum of [\$]30,000," adding that it was "absurd to think I would have that kind of money laying around ... why would anybody agree to that." *Pet'r's Hr'g Req.* Despite his sentiments, Petitioner signed the *Notes* and is thereby bound by their terms.

In a statement attached to his Hearing Request, Petitioner alleges that he "never saw any of that money" and was "scammed." (*Pet'r's Hr'g Req.*) However, HUD has explained that Petitioner executed the *Notes* in exchange for foreclosure relief. (Sec'y Stat ¶ 3; Sautter Decl., ¶ 3.) Each of the *Notes* is a "Partial Claims Promissory Note," governed by 12 U.S.C. 1715u(b), and each clearly states that Petitioner signed it "[i]n return for a loan received from [HUD]." Ex. 1, *Notes* ¶ 2. Under the statute, when a mortgage is in default or facing imminent default, HUD pays a partial insurance claim to the lender, not the borrower, in exchange for the borrower's agreement to repay the amount of the claim. See 12 U.S.C. 1715u(b). Thus, the borrower is not supposed to "[see] any of that money" because it goes directly to the lender to be applied toward the arrearages on the mortgage. *Pet'r Hr'g Req.*; see 1715u(b)(2)(B)-(C).

The *Notes* clearly state that Petitioner promises to pay HUD the principal sums of \$7,071.15 and \$24, 916.01 respectively, which will become due and payable immediately if the conditions in ¶ 3 occur, namely that Petitioner's primary mortgage is paid in full. *Notes* at ¶ 3(A)(i). Petitioner's signature on the *Notes* binds him to its terms. Because Petitioner's primary note was paid in full, his debt to HUD is due and payable.

II. Financial Hardship

Petitioner raises a claim of financial hardship due to exigent circumstances including damage to and lost habitability of his family's home due to natural disasters. In Petitioner's Hearing Request, he submitted a Consumer Debt Financial Statement and explained that he and his wife fell behind on their primary mortgage when they were out of work in 2014 and had subsequently lost everything in floods. *Pet'r's Hr'g Req.* On February 12, 2018, Petitioner submitted an additional letter clarifying that they had completed paperwork to modify their

mortgage in 2014, but had then lost their home in 2016 during the Brazos River Flooding, and subsequently lost everything again in Hurricane Harvey in August 2017. Petitioner attached pictures of their flooded property corroborating his account of losses due to Hurricane Harvey. Pet'r's Doc. Evid., Feb. 2018. On April 16, 2018, he submitted a typewritten list of claimed expenses, a copy of his most recent joint income tax return quantifying his and his wife's losses from the hurricane, and a copy of his lease and other documents confirming that he is now renting a house for \$1,750.00 per month because his property flooded during the hurricane. (Petitioner's Documentary Evidence ("Pet'r Doc. Evid., Apr. 2018"), dated April 16, 2018.) However, Petitioner has not provided adequate documentary evidence of his *essential* household expenses, despite receiving orders from the Court to do so on six occasions. (Notice of Docketing, Order and Stay of Referral, dated August 23, 2017; Ruling and Order Granting Extension of Time, dated September 25, 2017; Order for Documentary Evidence, dated December 7, 2017; Order to Show Cause Why This Appeal Should Not Be Dismissed, dated January 10, 2018; Ruling and Order Granting Extension of Time, dated January 29, 2018; Ruling and Order Granting Extension of Time, dated March 14, 2018).

Petitioner has established that he and his family have lost the use of their family's home, encumbered by the primary mortgage, due to flooding and the Court sympathizes with his plight. However, in matters of administrative wage garnishment, the financial hardship inquiry does not award credit for losses or misfortune. Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. Shone Russell, HUDOHA No. 09-H-NY-KK15 (June 25, 2009) (citing Raymond Kovalski, HUDBCA No. 87-1681-G18 (Dec. 8, 1986)).

Nevertheless, the Court has the discretion to mitigate the amount of garnishment allowable by law for reasons of financial hardship. See 31 C.F.R. § 285.11(k)(3). The Court examines whether the debtor's income is sufficient to meet his or her current essential household expenses. Petitioner must prove, by a preponderance of evidence, that the proposed terms of debt repayment would create extreme financial hardship. See 31 C.F.R. § 285.11(f)(8)(ii). To show financial hardship, Petitioner must submit "particularized" evidence, including proofs of payment, to establish his income and show that he will be unable to pay essential subsistence costs such as food, medical care, housing, clothing, or transportation. See 31 C.F.R. § 285.11(f)(8)(ii); Ray Jones, HUDAJF 84-1-OA at 2 (Mar. 27, 1985); Richard Johnican, 09-H-CH-AWG07 (Feb. 9, 2009). Without evidence to quantify Petitioner's expenses, the Court cannot calculate whether the wage garnishment plan will present a financial hardship. Here, Petitioner checked and initialed the box on his hearing request which stated "Note: You must provide a signed financial statement along with copies of earnings and income records and proof of expenses," demonstrating his acknowledgement that proof of payment is required. ("Pet'r's Hr'g Req.")

The Court has found it appropriate to credit essential household expenses such as rent and food in the absence of bills or other documentation only if the financial information submitted by the petitioner is found to be "generally credible." David Herring, HUDOA No. 07-H-NY-AWG53 (July 28, 2008) (citing Elva & Gilbert Loera, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). Here, the financial information provided by Petitioner is not credible because it contains inconsistencies and is not verifiable, as Petitioner failed to introduce *particularized* evidence to corroborate it.

Petitioner is a crane mechanic who holds no significant liquid assets. (*Pet'r's Hr'g Req.*) Based on Petitioner's paystub he earns \$4,080.00 monthly and is left with a disposable income of \$3,387.30. Petitioner claimed the following monthly expenses in his hearing request: a \$305.00 rent/mortgage payment; \$1,023.00 as car payments; \$550.00 for gasoline/auto repairs; \$290.00 for electricity; \$100.00 for natural gas; \$580.00 for food; \$32.42 for cable/satellite TV; \$278.00 for out-of-pocket medical expenses; \$180.00 for clothing; \$36.11 for trash; \$552.56 for auto insurance; \$680.00 for credit cards; \$710.00 for bank loans; and \$482.00 for "tools and phones." (*Pet'r's Hr'g Req.*) Later, Petitioner claimed the following monthly expenses: a \$1,750.00 rental payment; \$640.00 for his auto loan (reported to be \$630.00 elsewhere in the same filing); \$60.00 for "toll road;" \$225.00 for electricity; \$950.00 for groceries; \$222.00 for medical expenses; \$720.00 for auto insurance; \$2,258.00 in credit card and other miscellaneous debts²; \$420.00 for phones; and \$110.00 for internet. (*Pet'r Doc. Evid., Apr. 2018.*) Thus, the total monthly expenses Petitioner's household claims amount to between \$5,799.09 and \$7,355.00, revealing a \$1,555.91 discrepancy in Petitioner's self-reported financial information.

Petitioner's self-reported monthly expenses are not only dubious, but also some appear unreasonable. Petitioner's claim that he spends \$950.00 on groceries appears overstated. Similarly, \$420 for phones and \$720 for auto insurance appear excessive.

The Court recognizes Petitioner's exigent circumstances and acknowledges that it is reasonable to believe that Petitioner incurred excess debt and ongoing additional expenses, such as a rental payment to live in substitute housing, which he proved by submitting a copy of his lease. Petitioner also states that he accumulated additional bills, such as a second electric bill because of the natural disasters that damaged his property, but the Court cannot credit these expenses without documentation. (*Pet'r's Doc. Evid., Feb. 2018.*) Similarly, the Court cannot credit Petitioner for his credit card and other miscellaneous debts because they lack proper particularized evidence. Without documentation, the Court cannot determine whether these debts were incurred for essential subsistence costs and cannot substantiate the significant amounts Petitioner claims to be paying each month.

Assuming, *arguendo*, that the Court were to find Petitioner's self-reported financial information to be credible, Petitioner still has failed to demonstrate that the proposed terms of debt repayment would create extreme financial hardship. Using the most current financial information provided, when credit card and other miscellaneous debts are disallowed (as there is no evidence that these debts covered essential expenses), Petitioner's share of the total household

² Petitioner lists the following creditors and amounts due, henceforth referred to as "credit card and miscellaneous debts": \$3,200.00 (\$178.00 monthly payment) to Regional Finance; \$2,900.00 (\$130.00 monthly payment) to Navy Exchange; \$950.00 (\$85.00 monthly payment) to Amazon; \$2,500.00 (\$120.00 monthly payment) to Chase; \$3,800.00 (\$120.00 monthly payment) to CapitalOne; \$1,200.00 (\$80.00 monthly payment) for Build Card; \$8,800.00 (\$175.00 monthly payment) to Kubota; \$2,000.00 (\$110.00 monthly payment) to Barclay; \$900.00 (\$40.00 monthly payment) to Firestone; \$7,500.00 (\$280.00 monthly payment) to Conns Furniture; \$7,500.00 (\$240.00 monthly payment) to One Main; \$1,800.00 (\$160.00 monthly payment) to Southern Journey; \$5,300.00 (\$150.00 monthly payment) to Matco; \$6,800.00 (\$200.00 monthly payment) to Snap On; \$200.00 (\$50.00 monthly payment) to Cornwell; and \$35,230.00 (\$140.00 monthly payment) for student loans. *Pet'r Doc. Evid., Apr. 2018.* Petitioner provided only a typewritten list as documentation of these expenses.

expenses amounts to \$2,548.50 monthly.³ Petitioner's monthly disposable pay of \$3,387.30, less \$508.10 in garnishment, and less \$2,548.50 for essential household expenses, results in a monthly balance of \$330.70 to be applied toward credit card debts and other miscellaneous debts or any other non-essential expenses Petitioner may have incurred.

Petitioner fails to meet his burden to produce documentation sufficient to prove, by a preponderance of evidence, his claim that the Secretary's proposed wage garnishment would impose extreme financial hardship, such as an inability to pay for essential household expenses.

ORDER

For the reasons set forth above, I find the subject debt to be legally enforceable against Petitioner in the amount claimed by the Secretary. 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 amount requested.

SO ORDERED.



H. Alexander Manuel
Administrative Judge

³ Because Petitioner's spouse also works full time, according to Petitioner's joint income tax return, the Court assumes Petitioner's responsibility for half the household's total monthly expenses. $(\$7,355.00 \text{ in total household expenses} - \$2,258.00 \text{ in credit card and other miscellaneous debts}) \div 2 = \$2,548.50$.