

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

In the Matter of:

Blair Timmons,

Petitioner.

17-AM-0197-AG-074

721009521

July 19, 2018

DECISION AND ORDER

On September 1, 2017, Blair Timmons (“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 April 11, 2013, Petitioner executed and delivered to the Secretary a Subordinate Note (“Note” or “Subordinate Note”) in the amount of \$62,264.51, in exchange for foreclosure relief. (Secretary’s Statement (“Sec’y Stat.”) ¶¶ 2-3, filed September 15, 2017; Ex. 1, Declaration of Brian Dillon¹ (“Dillon Decl.”).) The Note described four events that would make the debt immediately due and payable. (Sec’y Stat., ¶ 4; Ex. 2, Note p. 2 ¶ 4.) One of those events was the payment in full of the primary note and related mortgage. (Sec’y Stat., ¶ 4; Ex. 2, Note p. 2 ¶ 4.) On or about August 7, 2015, the Secretary was informed that the primary note had been paid in full. (Sec’y Stat., ¶ 5; Ex. 1 ¶ 4.)

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

HUD states that it has attempted to collect on the Note from the Petitioner, but without success. (Sec’y Stat., ¶ 6; Dillon Decl ¶ 5.) Consequently, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a. \$62,264.51 as the unpaid principal balance as of August 31, 2017;
- b. \$414.96 as the unpaid interest on the principal balance at 1% per annum through August 31, 2017;
- c. \$3,783.65 as the unpaid penalties and administrative costs through August 31, 2017; and
- d. Any interest on said principal balance from September 1, 2017, at 1% per annum until paid.

(Sec’y Stat., ¶ 7; Dillon Decl., ¶ 5.)

On July 10, 2017, HUD sent Petitioner a Notice of Intent to Initiate Administrative Wage Garnishment. (Sec’y Stat., ¶ 8; Dillon Decl., ¶ 6.)

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 the sworn declaration of Brian Dillon, and a copy of the Note 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 does not contest the existence of the debt, but rather contends that he was “under the impression that” the Note was repaid upon sale of the property in August 2015. (Petitioner’s Hearing Request, (“*Pet’r’s Hr’g Req.*”) dated September 1, 2017.) Petitioner has filed documentary evidence including documents from the title company that handled the sale of Petitioner’s home and mortgage documents from Petitioner’s lender, including, *inter alia*, the “Seller’s Final Settlement Statement” from the title company. (*Petitioner’s Documentary Evidence*, filed September 19, 2017.) The “Seller’s Final Settlement Statement” includes an itemized invoice that states that loans were paid off *only* to Bank of America and during the sale of the property. (*Petitioner’s Documentary Evidence*.) Petitioner failed to respond to this Court’s *Order for Documentary Evidence* that was sent to Petitioner on February 6, 2018.

For Petitioner to prove that a debt owed to the Secretary has been satisfied, there either must be a written release from HUD or evidence of valuable consideration accepted by HUD from Petitioner. 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. Petitioner’s evidence, standing alone,

proves to be insufficient as support for Petitioner's argument as there is no written release from HUD nor evidence of valuable consideration accepted by HUD. Therefore, the Court finds that Petitioner's debt to HUD is past due and legally enforceable.

HUD attempted to obtain Petitioner's financial information on September 7, 2017, however, Petitioner failed to provide any information to HUD. (See Sec'y Stat.) Therefore, the Secretary proposes a repayment schedule of \$1,850 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay. Id.

Petitioner raises a claim of financial hardship because he was "surprised" and "not prepared" to repay the debt. (*Pet'r's Hr'g Req.*) However, 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)). In order to show financial hardship, Petitioner must submit "particularized" evidence, including proofs of payment, showing 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 Johnnican, 09-H-CH-AWG07 (Feb. 9, 2009).

Here, Petitioner's claim of financial hardship is merely an allegation in the absence of evidence. Petitioner failed to provide any particularized documentary evidence relating to his financial hardship. Petitioner's documentary evidence does not include any information relating to Petitioner's income or expenses. 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 unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). This Court thus finds that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

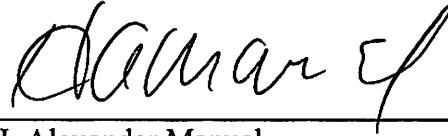
ORDER

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

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**. It is

FURTHER ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the lesser amount of 15% of Petitioner's monthly disposable income or \$1,850.00 per month.

SO ORDERED.

A handwritten signature in cursive script, appearing to read "H. Alexander Manuel", written in black ink.

H. Alexander Manuel
Administrative Judge