

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

In the Matter of:

Matthew Kelly,

Petitioner.

17-VH-0166-AG-047

721010274

September 10, 2018

DECISION AND ORDER

On August 22, 2017, Matthew Kelly (“Petitioner”) filed a hearing request concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“Secretary”).

JURISDICTION

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment pursuant to 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f) (8) (i). Thereafter, Petitioner 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). In addition, Petitioner may present evidence that the terms of any 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.*

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f) (4), on August 23, 2017, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On September 18, 2017, the Secretary filed his *Statement* along with documentation in support of his position. Petitioner filed documentary evidence in support of his claim of financial hardship on November 17, 2017. This case is now ripe for review.

FINDINGS OF FACTS

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A, because 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 wage garnishment as a mechanism for the collection of debts allegedly owed to the United States government.

On or about September 28, 2015, Matthew R. Kelly a/k/a Matthew Kelly ("Petitioner") and Thomas Richard Kelly executed and delivered to the Secretary a Partial Claim Promissory Note ("Note") in the amount of \$15,266.28. *Sec'y. Stat.* ¶ 2, Ex. 2, *Declaration of Kathleen M. Porter*¹ ("Porter Decl."), ¶ 4. The Note secured a Subordinate Mortgage (Mortgage) held by the Secretary. *Sec'y. Stat.* ¶ 2, Ex. 1.

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat.* ¶ 3, Ex. 2, *Porter Decl.*, ¶ 4. By terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs: "(3)(A) on January 1, 2043 or, if earlier, when...(i) borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary; or (ii) the maturity date of the primary note has been accelerated; or (iii) the primary note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary; or (iv) the property is not occupied by the purchaser as his or her principal residence." *Sec'y. Stat.* ¶ 4, Ex. 2, *Porter Decl.*, ¶ 4.

On or about October 5, 2016, the FHA mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated the primary note and mortgage was paid in full. *Sec'y. Stat.* ¶ 4, Ex. 2, *Porter Decl.*, ¶ 6.

HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.* ¶ 7, Ex. 2, *Porter Decl.*, ¶ 5. Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$15,266.28 as the unpaid principal balance as of August 30, 2017;
- b. \$76.32 as the unpaid interest on the principal balance at 1 % per annum through August 30, 2017;
- c. \$954.36 as the unpaid penalties and administrative costs as of August 0, 2017; and
- d. interest on said principal balance from August 31, 2017 at 1 % per annum until paid.

Sec'y. Stat. ¶ 8, Ex. 2, *Porter Decl.*, ¶ 5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated July 27, 2017, was mailed to Petitioner's last known address. *Sec'y. Stat.* ¶ 6, Ex. 2, *Porter Decl.*, ¶ 9.

¹ Kathleen Porter is Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

In accordance with 31 C.F.R. 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD. *Sec'y. Stat. ¶ 10, Ex. 2, Porter Decl., ¶ 7.* However, to date, Petitioner has not entered into any such agreement.

DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner contends that the proposed garnishment amount would create a financial hardship. As support, he submitted copies of the Notice of Intent to Collect, completed Financial Statement, and mortgage payoff statement from Wells Fargo Home Mortgage. *Petitioner's Hearing Request (Hrg. Req.)*, filed August 22, 2017.

As set forth in 31 C.F.R. § 285.11 (f)(8)(ii), Petitioner is required to show, by a preponderance of the evidence, that the proposed wage garnishment repayment schedule would create a financial hardship. In a case involving a claim of financial hardship, Petitioner “must submit ‘particularized evidence,’ including proofs of payment, showing that she will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation.” Ray J. Jones, HUDAJF 84-1-OA at 2 (March 27, 1985).

Petitioner, herein, only submitted a *Hearing Request* with limited evidence that the Court considered and determined to be inadequate. As a result, additional evidence was needed to assist the Court in making this determination. In subsequent *Orders* issued by the Court, Petitioner was ordered to submit the additional documentation needed for the Court to decide. Petitioner was informed that, “documentary evidence should not be limited to a mere list of expenses, but instead must include proof of payment, where applicable.” (Emphasis in original). See Notice of Docketing, dated August 23, 2017; Order to Show Cause, dated June 6, 2018. The Court further outlined, with specificity, the types of documentary evidence that could be considered in reviewing Petitioner's hardship claim. Petitioner did not, however, produce the additional evidence to meet his burden of proof.

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)). In the absence of sufficient documentary evidence to support Petitioner's position, the Court is not equipped to assess the credibility of Petitioner's financial hardship claim. Therefore, the Court finds that Petitioner's financial hardship claim fails for lack of sufficient proof.

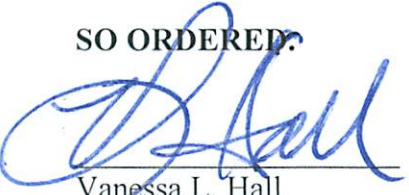
Without a record of evidence from the Petitioner that refutes or rebuts what the Secretary has presented, the Court also finds that Petitioner remains contractually obligated to pay the amount alleged by the Secretary.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at \$128.10 weekly, or an amount equal to 15% of Petitioner's disposable income.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.