

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

In the Matter of:

Matthew Conklin,

Petitioner.

17-VH-0188-AG-066

721010187

August 22, 2018

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hearing Request*”) filed by Matthew Conklin (“Petitioner”) on August 28, 2017, 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 31 C.F.R. § 285.11(f)(4) on August 30, 2017, the Court stayed the issuance of a wage withholding order until the issuance of this written decision. *See Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”) at 2. On September 13, 2017, the Secretary filed a *Secretary’s Statement* along with documentation in support of her position. On November 20, 2017, Petitioner filed his *Response* to the Court’s *Order for Documentary Evidence* in support of his claim. This case is now ripe for review.

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. 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.

FINDINGS OF FACT

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, 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. § 3720D), authorizes federal agencies to use administrative wage garnishments as a mechanism for the collection of debts allegedly owed to the United States government.

On or about October 11, 2013, Petitioner executed and delivered a Partial Claims Promissory Note (“Note”) to the Secretary in the amount of \$19,630.99. *See Sec’y Stat.* ¶ 4; Ex. B, Note ¶ 2. HUD advanced funds to Petitioner’s FHA insured mortgage lender as means of preventing the lender from foreclosing. *See Sec’y Stat.*, ¶ 3; Ex. A, *Declaration of Brian Dillon* (“*Dillon Decl.*”). In exchange for such funds, Petitioner executed the Note in the favor of the

Secretary. *See Sec'y Stat.*, ¶ 4. On or about November 4, 2016, the primary note and mortgage was paid in full, and the FHA mortgage insurance on the primary note was terminated. *See Sec'y Stat.*, ¶ 6; *Dillon Decl.* ¶ 4. Because the primary note and mortgage were paid in full, and the FHA mortgage insurance was terminated, the Note became immediately due and payable, pursuant to the terms of the Note. *See Sec'y Stat.* ¶ 5; Ex. B, Note ¶ 3(A)(i).

HUD's attempts to collect this alleged debt from Petitioner have been unsuccessful. *See Sec'y Stat.*, ¶ 9; *Dillon Decl.*, ¶ 5, 6, and 7. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$19,630.99 as the unpaid principal balance as of August 31, 2017;
- b) \$98.10 as the unpaid interest on the principal balance at 1% per annum through August 31, 2017;
- c) \$1,217.11 as the unpaid penalties and administrative costs through August 31, 2017; and
- d) interest on said principal balance from September 1, 2017, at 1% per annum until paid.

See Sec'y Stat., ¶ 9; *Dillon Decl.*, ¶ 5.

On July 27, 2017, a *Notice of Intent to Initiate Wage Garnishment Proceedings* ("Notice") was mailed to Petitioner. *See Sec'y Stat.*, ¶ 10; *Dillon Decl.*, ¶ 6. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement. Petitioner did not enter into a repayment agreement or pay the debt in full in response to the *Notice*. *Id.*

The Secretary proposes a repayment schedule of \$581.84 per month or an amount equal to 15% of Petitioner's disposable income. *See Sec'y Stat.*, ¶ 14.

DISCUSSION

Petitioner contends that he does not owe the debt amount claimed by the Secretary. *See Pet'r's Hr'g Req.* Even though Petitioner's home was foreclosed, Petitioner states that he was approved for a "loan modification" by Wells Fargo and the modification equipped him to "keep [his] home and [the] payments current." *Id.* at ¶ 2. On numerous occasions, according to Petitioner, he was notified by Wells Fargo that "the missed payments were to be added onto the end of [his] loan." *Id.* Petitioner introduced into evidence proof that the amount owed on his Wells Fargo mortgage, \$74,154.86, was satisfied, the record does not reflect full payment of the subject debt. *See Pet'r's Resp.* 2, 5. Petitioner instead admitted that he "does not have a copy" of the promissory note nor did he recall "signing any contractual agreement" related to the Note. *Id.* at ¶ 1.

In response, the Secretary states that when Petitioner sold his home on October 24, 2016, Petitioner satisfied his indebtedness to Wells Fargo but failed to satisfy his debt to HUD. *See Sec'y Stat.*, ¶ 13. For clarification, the Secretary stated that Petitioner apparently misunderstood that satisfaction of the indebtedness to Wells Fargo was not considered also satisfaction of the

debt owed to HUD. *See Sec'y Stat.*, ¶ 12. As support for his position that the subject debt was still owed, the Secretary produced a copy of the Note signed by Petitioner, along with a copy of a sworn declaration from the Director of HUD's Asset Recovery Division substantiating the debt amount owed by Petitioner. *See Sec'y Stat.*, Ex. B; *Dillon Decl.*, ¶ 5. In addition, the Secretary introduced into evidence a copy of Petitioner's Mortgage Payoff Statement to show that although Petitioner made a payment of \$74,154.86 to Wells Fargo, that payment did not include the subject debt. *See Sec'y Stat.*, Ex. A, Mortgage Payoff Statement.

Petitioner's execution of the Note immediately obligated him to make a payment to HUD in the event that "the borrower has paid in full all amounts due under the primary Note and related mortgage, deed of trust or similar Security Instruments issued by the Secretary." *See Sec'y Stat.*, Ex. B, Note ¶ 3(A)(i). The Note contained specific instructions on how and where payment should be made to the Secretary, and those instructions were unambiguous. *Id.* at Note ¶ 3(B). Petitioner's misunderstanding of the terms of a contract, herein the Note, does not serve as a basis for releasing him from the Note. "A person who signs a written contract is bound by its terms regardless of his or her failure to read and understand its terms." Hedieh Rezai, 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 misunderstanding that the subject debt was discharged upon full payment of the mortgage to Wells Fargo consequently was in error. As a result, Petitioner remains contractually obligated to pay the debt alleged herein.

For Petitioner to prove full satisfaction of the subject debt, there must be either a written release from HUD, or evidence of valuable consideration accepted by HUD from Petitioner. *See Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). The documents introduced into evidence by Petitioner were insufficient as proof of full payment of the subject debt. *See Pet'r's Resp.* 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 Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Thus, the Court finds Petitioner's claim fails for lack of proof.


ORDER

Based on the foregoing, Petitioner remains contractually obligated to pay the subject debt.

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 of \$581.84 per month 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 this *Decision and Order*, and shall be granted only upon a showing of good cause.