

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

In the Matter of:

Dominick Bifano IV,

Petitioner.

17-VH-0203-AG-078

721010170

April 11, 2019

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon Petitioner, Dominick Bifano IV, filing on September 11, 2017 a *Request for Hearing (Hearing Request)*, along with documentary evidence, 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”). This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations.

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 the procedures set forth at 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 September 13, 2017, this Court stayed the issuance of a wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral (“Notice of Docketing”)*) at 2. On October 16, 2017, the Secretary filed his *Statement (Sec’y. Stat.)* along with documentation in support of his position. As already noted, Petitioner filed documentary

evidence along with his *Hearing Request* as support for his claim of financial hardship. This case is now ripe for review.

FINDINGS OF FACT

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.

On or about June 30, 2015, Dominick A. Bifano IV ("Petitioner") and Heather A. Sounthonevichith executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$ 22, 300.97. *Secretary's Statement (Sec'y. Stat.)*, ¶ 2, Ex. 2. The Note secured a Subordinate Mortgage held by the Secretary. *Sec'y. Stat.*, Ex. 1, *Declaration of Brian Dillon (Dillon Decl.)*,¹ ¶ 3.

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured first mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat.*, ¶ 3; Ex. 1, *Dillon 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 (4)(A)[o]n November 1, 2042 or, if earlier, when the first of the following events occurs: (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.

On or about September 12, 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.*, ¶ 5; Ex. 1, *Dillon Decl.*, ¶ 4. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.*, ¶ 6; Ex. 1, *Dillon Decl.* ¶ 6.

Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$22,300.97 as the unpaid principal balance as of August 31, 2017;
- b. \$111.48 as the unpaid interest on the principal balance at 1 % per annum through August 31, 2017;
- c. \$1,377.85 as the unpaid penalties and administrative costs on the balance through August 31, 2017; and
interest on said principal balance from September 1, 2017 at 1 % per annum until paid.

Sec'y. Stat., ¶ 7; Ex. 1, *Dillon Decl.*, ¶ 5.

¹ Brian Dillon is the Director of the Asset Recovery Division of HUD's Financial Operations Center.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated August 28, 2017, was mailed to Petitioner at his last-known address, 4657 E. Wildhorse Dive, Gilbert, AZ 85297-2447. *Sec'y. Stat.*, ¶ 8, Ex.1, *Dillon Decl.*, ¶ 6.

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.*, ¶ 9, Ex.1, *Dillon Decl.*, ¶ 7. The August 28, 2017 letter sent to Petitioner by Department of the Treasury satisfied this requirement. The letter indicates, "You should call us at the telephone number listed below to discuss acceptable repayment plans." The letter also indicates, "If you pay your debt in full or enter into a repayment plan acceptable to Treasury before September 27, 2017, a garnishment order will not be issued to your employer." *Id.* Petitioner has not entered into any such agreement. *Sec'y. Stat.*, ¶ 9, Ex.1, *Dillon Decl.*, ¶ 8.

Based upon the income information Petitioner provided, the Secretary proposes a repayment schedule of \$521.41 bi-weekly, or an amount equal to 15% of Petitioner's disposable income. *Sec'y. Stat.*, ¶ 12; Ex. 1, *Dillon Decl.*, ¶ 9.

DISCUSSION

Petitioner acknowledges the existence of the debt, but states that, "I cannot make the current payment due to the fact we are a single income family. My net expenses monthly with food and gas are around \$6,200 USD monthly. With that being said the maximum monthly payment we can make is \$150 USD per month. Attached are my paycheck stubs and bank statements outlining what is paid every month. Please advise as to how to proceed. Thanks for your time." *Petitioner's Hearing Request*.

Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship to the Petitioner. Pursuant to 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). As support for his claim of financial hardship, Petitioner offered documentary evidence that included copies of recent monthly earnings statement and a bank statement from US Bank that reflected certain monthly household expenses. *Petitioner's Hearing Request*, Attachments.

Based on the two bi-weekly earnings statements offered by Petitioner, Petitioner's disposable income totaled \$6429.81 for the month of August 2017 after allowable monthly deductions for: federal income tax withholding, \$768.93; FICA, \$634.89; state tax withholding, \$217.38; dental pretax/vision contribution, \$59.04; and 401K, \$250.63. *Petitioner's Hearing Request*, Attachments.

Petitioner identified the following monthly household expenses to be deducted from his disposable income: mortgage with New Penn Financial, \$1799.47; automobile loan payment, \$530.83; auto insurance, \$260.52; electric and gas, \$93.71; cell phone, \$167.88; credit cards, \$106.00; and life insurance, \$211.28. *Petitioner's Hearing Request*, Attachments. These monthly expenses totaled \$3169.69. The record does not reflect that other miscellaneous household expenses (i.e. food or other utility costs) were submitted or identified by Petitioner.

After deducting Petitioner's monthly household expenses from his monthly disposable income of \$6429.81, the balance that remains is \$3260.12. The 15% garnishment rate proposed by the Secretary at \$521.41 bi-weekly, or \$1042.82 per month, would reduce Petitioner's monthly income to \$2217.30, an amount that is more than sufficient to cover other miscellaneous expenses not yet identified by Petitioner.

Based on the evidence presented by Petitioner, the Court finds that he has failed to meet his burden of proof that the proposed garnishment amount would cause a financial hardship for him. Consequently, Petitioner's claim of financial hardship fails for lack of proof.

ORDER

Based on the foregoing, Petitioner remains contractually obligated to pay the subject debt in the amount so claimed by the Secretary.

The *Order* imposing the stay of referral of this matter to the U.S. Department of 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 \$521.41 bi-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.