

CORRECTED COPY

(Changes underlined on p. 4)

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

In the Matter of

Daniel McLaughlin,

Petitioner,

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: 18-AM-0058-AG-036
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: 721010573
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: July 30, 2019
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DECISION, RULING, AND ORDER

On or about April 16, 2018, Daniel McLaughlin, ("Petitioner") filed a Request of Hearing concerning the amount, and enforceability of an alleged debt owed to the U.S. Department of Housing and Urban Development ("HUD" or "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 owed to the United States government.

The Secretary of HUD has designated the administrative judges of this Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts using 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(b).

As a preliminary matter, Petitioner has sought consolidation of this administrative wage garnishment proceeding with any related administrative offset proceeding. Accordingly, and without objection, Petitioner's motion to consolidate this case with any administrative offset proceeding is GRANTED.

BACKGROUND

On October 24, 2012, Petitioner sought financial assistance from HUD to help him avoid possible mortgage foreclosure by his primary lender ("primary lender"). HUD loaned the Petitioner the sum of \$13,709.18 to help him avoid defaulting on his mortgage. (See Secretary's Statement ("Sec'y Stat."), ¶ 3; Exh. A, Declaration of Brian Dillon, Director, HUD Asset Recovery Division, ¶ 4 ("Dillon Decl."); Exh B, Note). Petitioner executed and duly delivered a subordinate note ("Note"), evidencing this loan to HUD. (See Sec'y Stat., ¶ 4; Exh. B, Note).

Under the Note's term, Petitioner was to pay the principal amount of the unpaid balance until the Note was paid in full. (See Sec'y Stat., Exh. B ¶ 2). The Note cited specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable – one of which was when Petitioner has paid in full all amounts due under the primary note. (See Sec'y Stat. ¶ 5; Exh. B ¶ 4(A)(i)).

On or about October 28, 2016, Petitioner's primary lender notified HUD that Petitioner's underlying mortgage was paid in full. (Exh. A, Dillon Decl. ¶ 4). This information automatically triggered the termination of FHA insurance on the first mortgage and the provisions of ¶ 4(A)(i) of the Note, requiring Petitioner to pay the full amount owed under the Note to HUD. (See Sec'y Stat., ¶ 7; Exh. B ¶ 4).

Thereafter, HUD made its demand upon Petitioner to pay the amounts owed, but Petitioner failed to do. As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$9,737.67 as the unpaid principal balance;
- b) \$72.99 as the unpaid interest on the principal balance at 1% per annum;
- c) \$728.02 as the unpaid penalties and administrative costs; and
- d) Interest on said principal balance from December 1, 2018 at 1% per annum until paid

(See Sec'y Stat., ¶ 9; Exh. A, Dillon Decl., ¶ 5)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated May 15, 2017, was sent to Petitioner. (See Sec'y Stat., ¶ 10; Exh. A, Dillon Decl., ¶ 6). Petitioner failed to request a hearing before the deadline elapsed as stated in the Notice of Intent. *Id.* Subsequently, on March 21, 2018, a federal payment due Petitioner in the amount of \$4,975.00 was offset and applied to Petitioner's debt to HUD. *Id.* Under 31 C.F.R. § 285.11(e)(2)(iii), Petitioner was given the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. (See Sec'y Stat., ¶ 11; Exh. A, Dillon Decl., ¶ 7). Petitioner has not entered into a written repayment agreement in response to the Notice. *Id.*

DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. (See 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. (See 31 C.F.R. § 285.11(f)(8)(ii)). Additionally, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, or that the alleged debt is legally unenforceable. *Id.*

As evidence of the Petitioner's indebtedness, the Secretary has filed the Secretary's Statement (Sec'y Stat.) along with the sworn declaration (Exh. A, Dillon Decl.) of Brian Dillon,

Director, Asset Recovery Division; and a copy of the Note. Accordingly, the Court finds that the Secretary has met his initial burden of proof.

In Petitioner's Request for Hearing, Petitioner indicated that the debt was not owed. Petitioner held that there was title work done and there was no mention of this additional debt owed on the property. (See Petitioner's November Letter, (Pet'r Nov. Ltr.), ¶ 2). Further, Petitioner stated that because the Bank of America ("BOFA") mortgage was paid in full the debt to HUD is not owed. (Pet'r Nov. Ltr., ¶ 4). Petitioner has apparently, assumed that all monies owed to BOFA and the Secretary were reflected on the BOFA payoff letter dated October 12, 2016. (See Petitioner's Formal Statement of Appeal ("Petitioner's Appeal"), ¶ 3). Petitioner asserts that if he had received periodic statements reminding him of the debt owed to HUD, he would not have sold his house in the first place.

None of these arguments have the legal effect of extinguishing Petitioner's liability for the subordinate note that he signed. The express terms of the Note indicate that it would need to be paid in full at any time an event in ¶ 4 occurred (See Petitioner's Appeal, ¶ 15; Exh. B, Note, ¶ 4). Although it may be helpful for debtors to receive regular invoices from their lenders, Petitioner has not pointed to any term or provision of the Note, or the related loan documents, that require the Department to provide regular reminders to Petitioner that he still owes the debt. The Court disagrees with Petitioner's argument that not providing such reminders, amounts to unfair or unjust actions by the Department.

Although Petitioner paid his BOFA mortgage off in full, the Note with HUD is separate and apart from his indebtedness to BOFA. (See Sec'y Stat., ¶ 4). Petitioner has not provided any evidence that he paid HUD's Note when he paid off his primary mortgage with BOFA. *Id.* Petitioner has also not provided the Court with any evidence of a "release in writing from [HUD] specifically discharging Petitioner's obligation, or valuable consideration accepted by [HUD] from Petitioner, which would indicate an intent to release", therefore the debt must be paid. (See Sec'y Stat., ¶ 15). Therefore, the Court finds that the debt to the Secretary is past due and legally enforceable.

Petitioner claims that repayment of the debt at this time would cause him undue financial hardship. (Petitioner's Appeal, ¶ 11). However, Petitioner has only provided generalities in proving his assertion of financial hardship. The Court notes that Petitioner earns a take-home monthly income of approximately \$3,522, and that he cares for four young children. But without proof of payment of mortgage, rent, groceries, clothing, medical expenses, utilities, and other necessary household expenses, the Court is unable to make a finding of financial hardship. The Court notes, however, that the provisions of 31 C.F.R. §285.11(k), permit Petitioner to move for reconsideration of this matter if and when his financial circumstances warrant further review.

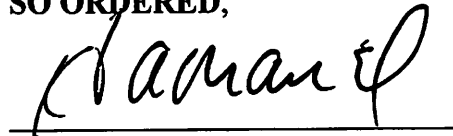
ORDER

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

ORDERED that the Order imposing the Stay of Referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment, on or about April 18, 2018, is VACATED. It is

FURTHER ORDERED that the Secretary is authorized to collect the debt in this case in the amount of 15% of Petitioner's disposable monthly income, or in the maximum amount permitted by law.

SO ORDERED,

A handwritten signature in black ink, appearing to read "H. Alexander Manuel", written over a horizontal line.

H. Alexander Manuel
Administrative Judge

APPEAL NOTICE: You have the right to move for reconsideration of this case before the HUD Office of Hearings and Appeals within 20 days of the date of this ruling or decision; or, thereafter, to reopen this case. Ordinarily, such motions will not be granted absent a showing of new evidence that could not have been previously presented. You may also appeal this decision to the appropriate United States District Court. For wage garnishment cases, *See* 24 C.F.R. § 17.81, 31 C.F.R. § 285.11(f), and 5 U.S.C. 701, *et seq.* For administrative offset cases, *See* 24 C.F.R. § 17.73(a), and 5 U.S.C. § 701, *et seq.*