

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

In the Matter of

Andrew Shields,

Petitioner,

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:
: 18-AM-0083-AG-045
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: 7210103350A
:
: July 17, 2019
:

DECISION AND ORDER

On December 18, 2017, Andrew Shields, (“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).

BACKGROUND

On or about February 20, 2014, Petitioner sought financial assistance from HUD to help him avoid possible mortgage foreclosure by his primary FHA-insured mortgage lender, (“primary lender”). HUD loaned the Petitioner the sum of \$7,616.83 to help him avoid foreclosure. (See Secretary’s Statement (“Sec’y Stat.”), ¶ 2; Exh. 2, Declaration of Brian Dillon, Director, HUD Asset Recovery Division, ¶ 4 (“Dillon Decl.”). Petitioner executed and duly delivered to the Secretary a Partial Claim Promissory Note (“Note”), evidencing this loan to HUD. (See Sec’y Stat., Exh. 1, Note).

Under the Note’s terms, Petitioner was to pay the principal amount of the unpaid balance until the Note was paid in full. (See Sec’y Stat., Exh. 1 ¶ 2). The Note cited specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable. (See Sec’y Stat. ¶ 4; Exh. 1 ¶ 3).

On or about March 15, 2015, the Petitioner’s first mortgage was paid in full and the FHA mortgage was terminated. (See Sec’y Stat., ¶ 5; Exh. 2, Dillon Decl., ¶ 4). HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. Id. (Exh. 2, ¶¶ 5-7

As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$7,616.83 as the unpaid principal balance as of December 31, 2017;
- b) \$63.40 as the unpaid interest on the principal balance at 1% per annum through December 31, 2017;
- c) \$458.53 as the unpaid penalties and administrative costs as of December 31, 2017; and
- d) \$35.33 as the unpaid admin cost through December 31, 2017;
- e) Interest on said principal balance from January 1, 2018 at 1% per annum until paid

(See Sec'y Stat., ¶ 7; Exh. 2, Dillon Decl., ¶ 5)

On November 20, 2017 a Notice of Intent to Initiate Administrative Wage Garnishment Proceeding ("Notice") was sent to Petitioner. (See Sec'y Stat., ¶ 6; Exh. 2, ¶ 6). Petitioner was given the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. (See Exh. 2, Dillon Decl., ¶ 7). Petitioner has not entered into a written repayment agreement in response to the November 30, 2017 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 the proposed repayment schedule are unlawful, would cause undue hardship to Petitioner, 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. 2, Dillon Decl.) by Brian Dillon, Director, Asset Recovery Division; and a copy of the Note (Exh.1). Accordingly, the Court finds that the Secretary has met the initial burden of proof.

Petitioner has the burden of producing evidence which demonstrates the claimed debt is not past-due or legally enforceable. (See Sec'y Stat., ¶ 8; Michael Cook, HUDBCA No. 87-2782-H307 (Aug. 11, 1988). "Assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due or enforceable." (See Sec'y Stat. ¶ 8; Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009); Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009); Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996).

As evidence, Petitioner has submitted a HUD-1 Closing Statement (See Sec'y Stat., ¶ 8; Exh. 3). This evidence shows all the disbursements that were made from the sales proceeds when Petitioner sold his house, however, it does not show a disbursement for HUD's Note. Id.

Petitioner does not provide any evidence of a release in writing from HUD specifically discharging Petition's obligation. Id. there is also no evidence demonstrating the debt was repaid. Id. Petitioner asserts that the title search agency should be responsible for the debt, which may or may not be correct. In any case, however, Petitioner has not demonstrated that HUD is in any way responsible for the actions of the title company in Petitioner's settlement transaction. Any error on the part of the title search agency does not absolve Petitioner's indebtedness to HUD. Therefore, the Court finds that Petitioner's debt to the Secretary is past due and legally enforceable.

DETERMINING REPAYMENT

The Secretary has made efforts to access Petitioner's income information to determine a repayment schedule. Petitioner has failed to provide a copy of his most recent pay statement for the Secretary to calculate a repayment schedule based on Petitioner's actual income. (See Sec'y Stat. ¶ 9; Exh. 2, Dillon Decl., ¶ 8). Petitioner has also not come forward with any claim of financial hardship or proof to support such a claim. The Secretary's proposed repayment schedule is \$294.50 per month, which will liquidate the debt in approximately three years. Federal Claims Standards recommends that collection not exceed 15% of Petitioner's disposable income. Id.

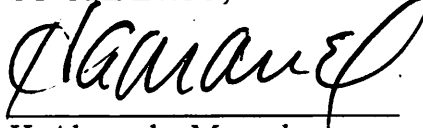
ORDER

For the reasons set forth above, I find the debt that is the 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 is **VACATED**. It is

FURTHER ORDERED that the Secretary is authorized to seek collection of the outstanding obligation using administrative wage garnishment in the amount of 15% of Petitioner's disposable income per month.

SO ORDERED,



H. Alexander Manual
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.*