

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS
Washington, D.C.

In the Matter of

Jarod Heming,

Petitioner,

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18-AM-0124-AG-060

721010085

July 17, 2019

DECISION AND ORDER

On February 20, 2018, Jarod Heming, (“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 via 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 November 24, 2014, Petitioner sought financial assistance from HUD to help him avoid possible mortgage foreclosure by his primary lender. HUD loaned Petitioner the sum of \$60,982.61 to avoid default on his HUD-insured primary mortgage. (See Secretary’s Statement (“Sec’y Stat.”), ¶ 2; Exh. A, Declaration of Brian Dillon, Director, HUD Asset Recovery Division, ¶ 4 (“Dillon Decl.”). Petitioner executed and duly delivered a Partial Claims Promissory Note (“Note”), evidencing this loan to HUD. (See Sec’y Stat., Exh. B, 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. 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 is the payment in full of the primary note. (See Sec’y Stat. ¶ 5; Exh. B ¶ 3(A))

On about August 19, 2016, Petitioner’s primary lender notified HUD that Petitioner’s primary was not paid in full. (Exh. A, Dillon Decl. ¶ 4). This information automatically triggered the termination of the FHA insurance on Petitioner’s primary note. (See Sec’y Stat., ¶ 6; Dillon Decl., ¶4; Exh. B ¶ 3(A)(i) & (iii)).

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

- a) \$60,982.61 as the unpaid principal balance as of February 28, 2018;
- b) \$609.60 as the unpaid interest on the principal balance at 1% per annum through February 28, 2018;
- c) \$3,706.48 as the unpaid penalties and administrative costs as of February 28, 2018; and
- d) Interest on said principal balance from March 1, 2018 at 1% per annum until paid

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

On July 27, 2017, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") was sent to Petitioner. (See Sec'y Stat., ¶ 10; Exh. A, Dillon Decl., ¶ 6). 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 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 a sworn declaration (Exh. A, Dillon Decl.) by Brian Dillon, Director, Asset Recovery Division; and a copy of the Note. Accordingly, the Court finds that the Secretary has met the initial burden of proof.

Petitioner's email dated June 28, 2018, states that he does not owe the full amount, indicated in his Request for Hearing. (See Sec'y Stat., ¶ 12). Further, Petitioner alleges that the settlement agent failed to ensure HUD's note was paid off and its mortgage extinguished, despite the mortgage being disclosed on the title report, at the time Petitioner's home was sold in 2016. (See Sec'y Stat., ¶ 13). The Court accepts the closing agent may have failed to ensure that HUD's lien was released, and that the associated debt was not paid. However, as the signer of the HUD-held Note, Petitioner is responsible for ensuring repayment of his indebtedness to HUD. Id.

Petitioner further claims that repayment of the debt at this time would cause him undue financial hardship. See Petitioner's Email, dated June 28, 2019 ("Pet's Email"). Petitioner states "I have considered filing for bankruptcy protection because I cannot afford what HUD now claims is owed. [sic]". *Id.* Petitioner provided that his monthly deductions equal \$221.12, which are already deducted from the provided net payments on the paystubs. Petitioner provided six pay stubs with different net pays ranging from \$1,065.44 to \$1,545.94. In order to consider if Petitioner will suffer an undue hardship, the bi-weekly average from the six provided pay stubs will be taken to determine a monthly disposable income. $[(1545.94 + 1436.83 + 1412.18 + 1261.42 + 1148.83 + 1065.44) / (6) = \$1311.78]$. With Petitioner's bi-weekly net pay on average at \$1,311.78, his monthly disposable income is \$2,623.56

Petitioner can claim necessary, monthly, household expenses to prove an undue hardship. The Court notes that Petitioner has claimed expenses for cable tv and a credit card, which do not qualify as necessary household expenses. The following expenses are being taken into consideration

1. Mortgage	1107.44
2. Insurance (Homeowner's)	87.50
3. Energy	72.00 $[(83.67 + 42.16 + 90.15) / (3)]$
4. Cell phone	97.61
TOTAL	<u>\$ 1,364.55</u>

After subtracting Petitioner's total necessary household expenses from his monthly disposable income, Petitioner is left with \$1,259.01. Pursuant to 31 C.F.R. § 285.11(e)(8)(ii), this Court has the discretion to modify the Secretary's proposed repayment schedule if there is a bona fide showing of financial hardship based on the record and such has been proven in this case. The Court finds there would be an undue financial hardship based on Petitioner's necessary household expenses since they are less than Petitioner's monthly disposable income. The Secretary's proposed repayment schedule is \$1,813.85 per month.

This Court finds that the Secretary has successfully proven the debt is past due and enforceable. However, the 15% garnishment rate is burdensome for Petitioner. The Court will use its discretionary power under 31 C.F.R. § 285.11(e)(8)(ii) to modify the Secretary's proposed repayment schedule at the rate of 15%, by reducing the garnishment rate to 10%. The proposed garnishment rate shall be reduced from 15% to a garnishment rate of 10% of Petitioner's monthly disposable income, unless Petitioner's financial circumstances otherwise improve in the future.

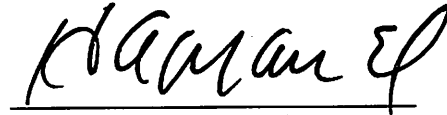
ORDER

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 amounts 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 this outstanding obligation by means of administrative wage garnishment in an amount equal to 10% of Petitioner's monthly disposable income.

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.*