

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

In the Matter of

**Alex Ruelas, and
Raylene Morales Ruelas**

Petitioners,

:
:
: 18-AM-0143-AG-074
: 18-AM-0054-AG-032
: (Consolidated cases)

:
: 721010753
:

: September 4, 2019
:

RULING, DECISION AND ORDER

As a preliminary matter, and notwithstanding earlier captions in this case, the correct claim number for these consolidated cases is: 721010753 not 721005891. The Court finds that the alleged debt in HUDOA Case Nos. 18-AM-0143-AG-074 and 18-AM-0054-AG-032 is based entirely on the same HUD loan entered into by Petitioners Alex Ruelas and Raylene Morales Ruelas on or about March 26, 2014. Accordingly, the Court rules *sua sponte* that the two cases are consolidated herein.

On or about March 15, 2018, Alex Ruelas and Raylene Morales Ruelas, (“Petitioners”) filed a Request for 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 March 26, 2014, Petitioners sought financial assistance from HUD to help them avoid possible mortgage foreclosure by Bank of America, their primary lender. HUD loaned Petitioners the sum of \$52,142.08 to avoid default on their HUD-insured primary mortgage. (See Secretary’s Statement (“Sec’y Stat.”), ¶ 2; Exh. 2, Declaration of Kathleen Porter, Director, HUD Asset Recovery Division, ¶ 4 (“Porter Decl.”). Petitioners executed and

duly delivered a Partial Claims Subordinate Note (“Note”), evidencing this loan to HUD. (See Sec’y Stat., Exh. 1, Note).

Under the Note’s terms, Petitioners were 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 – one of which was the payment in full of his primary mortgage with Bank of America. (See Sec’y Stat. ¶ 4; Exh. 1 ¶ 4(A)).

On or about July 1, 2015, Petitioners’ primary lender notified HUD that Petitioners’ primary note was paid in full. (Exh. 2, Porter Decl. ¶ 4). This information automatically triggered the termination of the FHA insurance on Petitioners’ primary note. (See Sec’y Stat., ¶ 5; Porter Decl., ¶ 4; Exh. 1 ¶ 4(A)(i) & (iii)).

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

- a) \$52,142.08 as the unpaid principal balance as of April 17, 2018;
- b) \$503.83 as the unpaid interest on the principal balance at 1% per annum through April 17, 2018;
- c) \$1,707.84 as the unpaid penalties and administrative costs as of April 17, 2018; and
- d) Interest on said principal balance from April 18, 2018 at 1% per annum until paid

(See Sec’y Stat., ¶ 7; Exh. 2, Porter Decl., ¶ 5)

On or about October 12, 2017, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) was sent to Petitioners. (See Sec’y Stat., ¶ 8; Exh. 2, Porter Decl., ¶ 6). Petitioners have 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)). Petitioners, 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, Petitioners may present evidence that the terms of the proposed repayment schedule are unlawful, would cause undue hardship to Petitioners, or that the alleged debt is legally unenforceable. Id.

As evidence of the Petitioners’ indebtedness, the Secretary has filed the Secretary’s Statement (Sec’y Stat.) along with a sworn declaration (Exh. 2, Porter Decl.) by Kathleen M.

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

Petitioners' Hearing Request states that they do not owe the debt evidenced by his note to HUD. (See Sec'y Stat., ¶ 9). However, in Petitioners' Response, dated July 2, 2018 ("Pet's Response"), Petitioners do not refute the amount in question, or the dates listed in the Note. (See Pet's Response, ¶ 2). Petitioners argue that their mortgage lender, Bank of America, terminated the FHA insurance and that the practices of the lender are out of the control of the Petitioners. (See Pet's Response, ¶ 3). Petitioners state that their home was not sold or refinanced, and the loan has not reached the date of maturity. Therefore, the debt is not past due or legally enforceable. (See Pet's Response, ¶ 4). However, one of the events that causes the Note to become due is if "[t]he Note and related mortgage, deed or trust or similar Security Instrument are no longer insured by the Secretary".

When Petitioners' mortgage loan with Bank of America was renegotiated in or around June of 2015, Petitioners apparently received an interest rate reduction and a reduction in the principal amount of the mortgage in accordance with a negotiated settlement that took place between Bank of America and the U.S. Department of Justice. *Id.*, ¶ 3. As a result of that renegotiation, Bank of America sold Petitioners' mortgage to another lender and terminated the FHA insurance for the mortgage. *Id.* That termination triggered the terms of ¶ 4(A)(iii) of the Note, and caused the full amount of the Note to become due and payable to HUD. (See Exh.1, ¶ 4(A)(iii)). Therefore, the Court finds that the debt evidenced by the Note is past due and legally enforceable.

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. Petitioners claim that the Secretary's proposed repayment schedule would create an undue financial hardship for their family. (See Pet's Response, ¶ 6-8). Petitioners have provided limited information as to their household expenses, but have failed to provide documentation of their pay statements. The Court is therefore hampered in reaching its finding that undue financial hardship would result from the imposition of the Secretary's proposed repayment schedule.

Based on the information Petitioners did provide, however, I find that the proposed repayment schedule of \$1,509.83 per month is excessive. The repayment schedule shall not exceed 10% of each of Petitioners' disposable income. Petitioners shall provide additional documentation to the Secretary so that the Secretary may determine whether a modification to the proposed repayment schedule is in order.

ORDER

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

ORDERED that the HUD administrative wage garnishment cases for Alex Ruelas and Raylene Morales Ruelas, denoted as HUDOA Case Nos. 18-AM-0143-AG-074 and 18-AM-0054-AG-032, respectively, are hereby CONSOLIDATED. It is

FURTHER 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 November 20, 2017, 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 each of the Petitioners' 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.*