

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

In the Matter of:

Matthew C. Shaw,

Petitioner.

18-AM-0180-AG-090

721009185

April 17, 2019

DECISION AND ORDER

On May 9, 2018, Matthew C. Shaw, ("Petitioner") filed a Request for Hearing concerning the amount, enforceability, or payment schedule of a debt allegedly 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 allegedly owed to the United States government.

The Secretary of HUD has designated the administrative judges of the Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with the procedures set forth at 24 C.F.R. §26.1, *et seq.*, and 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

BACKGROUND

On or about May 13, 2014, Petitioner sought financial assistance from HUD to help Petitioner avoid possible foreclosure of a mortgage with Petitioner's primary lender ("Primary Lender"). HUD loaned Petitioner the sum of \$19,369.95 to help Petitioner avoid defaulting on the mortgage with Petitioner's FHA-insured mortgage lender. (*See Secretary's Statement*, ("Sec'y Stat."), ¶¶ 2-3; Exh. 1, *Declaration of Brian Dillon*, ("Dillon Decl.") Director of Asset Recovery Division, HUD Financial Operations Center, ¶ 4.) Petitioner executed and duly delivered a subordinate note ("Note"), evidencing this loan to HUD. (*See Sec'y Stat.*, Exh. 2, the Note, dated May 13, 2014.) Under the terms of the Note, Petitioner was to repay the principal amount of the unpaid balance on the Note until it was paid in full. (*See Sec'y Stat.*, Ex. 2, ¶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's underlying mortgage to the Primary Lender was refinanced or otherwise paid in full. (*See Sec'y Stat.*, Ex. 2, ¶¶ 4(A)(i) & (iii)).

On or before August 11, 2015, Petitioner's Primary Lender notified HUD that Petitioner's underlying mortgage had been paid in full. This automatically triggered both the termination of the Primary Lender's insurance contract with the Federal Housing Administration, as well as the

provisions of ¶ 4(A)(i) & (iii) of the Note, requiring Petitioner to pay the full amount owed under the Note to HUD. HUD, thereafter, 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) \$17,842.99 as the unpaid principal balance as of April 30, 2018;
- b) \$193.18 as the unpaid interest on the principal balance at 1% per annum through April 30, 2018;
- c) \$403.97 as the unpaid penalties and administrative costs through April 30, 2018; and
- d) interest on said principal balance at 1% per annum from May 1, 2018, until paid.

(See *Sec'y Stat.*, ¶ 7; Exh. 1, ¶ 5).

On or about April 25, 2018, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") was mailed to Petitioner. (See *Sec'y Stat.*, ¶ 8; Ex. 1, ¶ 6). Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was given an opportunity to enter into a written repayment agreement under terms acceptable to HUD (See *Sec'y Stat.*, Ex. 1, ¶ 8). Petitioner provided to HUD a copy of Petitioner's most recent pay statement for the pay period ending April 30, 2018 (See *Sec'y Stat.*, ¶ 10; Ex. 1, ¶ 9). As a result, the Secretary proposes a repayment schedule from Petitioner's wages in the amount of \$370.59 per month, or an amount equal to 15% of Petitioner's disposable income. (See *Sec'y Stat.*, ¶ 10; Ex. 1, ¶ 9).

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 an undue financial 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*, together with accompanying sworn declaration by Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center; a copy of the Note, and accompanying notices and documents. (See *Sec'y Stat.*, Ex. 1; Ex. 2). Accordingly, the Court finds that the Secretary has met his initial burden of proof.

Petitioner seeks to dispel his alleged indebtedness to the Department by claiming that he acted in good faith, and that he was given false information by his title company, WFG National Title Company of California, when he sold his home. Petitioner has filed numerous documents consisting primarily of arguments and denials, but little in the way of proof. The correspondence that Petitioner filed with his *Request for Hearing*, between Petitioner and HUD officials, makes reference to Petitioner's Note with HUD, but does not demonstrate that the Note was ever paid.

In *Petitioner's Request for Hearing*, dated May 9, 2018, Petitioner states:

[due] to falling behind on our mortgage and needing help,[w]e were happy that we received help and we understood the terms of the Sub deed in the legal aspect that upon sale the second becomes the first and shall be paid first before any other monies are disbursed.

Petitioner's Request for Hearing, with accompanying statement, dated May 9, 2018. After Petitioner sold his home in or around August 2015, Petitioner describes his interactions with his title company, WFG National Title Company of California as follows:

I contacted NOVAD during this time [2017] and was told the title and escrow had never contacted them nor had they recorded the sale with them as is in the contract which I have included in my evidence in the form of a copy sent to me by title, this shows they had said document and had read it, they chose to ignore it and falsely give my wife and I the assurance it was paid . . . I do not dispute that a debt is due, I dispute the party responsible . . . The choice to pursue the other parties involved in this is not my decision to make, I speak only on my family's behalf.

Id. Petitioner has also filed *Petitioner's Statement*, dated June 14, 2018, where Petitioner states:

if indeed I had know[n] it was not paid I would have sent a check immediately and verified it was received, more so I would not have signed the closing documents until HUD was assuredly paid, which I was told it was [sic] . . . I have not denied HUD assisted in our time of need, that we did in fact sign the documents and that they were in fact recorded in the county of San Bernardino California . . . I am arguing the fact that I was not told HUD was not paid by anyone but the US Treasury and that was one year later.

Id. In addition to acknowledging the alleged errors that were made in conjunction with the failure to pay off the Note, Petitioner alludes to alleged financial hardship that would be suffered should Petitioner be required to repay the alleged debt in this case:

Of the monies from the sale I do not have them saved . . . I paid off debts, paid for preschool and after school care for my children and secured a lease on a home for us to live in . . . I live with my parents in Bastrop and I pay their mortgage they pay utilities, they are retired, I have my vehicle and my wife's vehicle and we have taken guardianship of my nephew from Finish to allow him the chance at school

here in America to give him a better [c]hance at life . . .
I truly feel violated by WFG in trusting them to do their job.

Id.

In response, the Secretary states that:

Petitioner claims . . . that . . . the title and escrow company and/or his primary lender provided him with assurances that the funds from the sale of his home would pay off both his primary mortgage and HUD's Note. Petitioner therefore asserts . . . that his primary lender and/or the closing title company is liable to repay HUD[.] However, Petitioner executed the Note . . . and thereby had knowledge of its terms and obligations . . . Further, Petitioner has failed to produce any evidence that the borrowed funds were repaid to HUD or that he was otherwise released from his obligations pursuant to the Note.

Sec'y Stat., ¶ 9. The Court agrees with the Secretary's position. In addition, Petitioner, himself, acknowledges that he has not repaid his Note to HUD. ("I have not denied HUD assisted in our time of need.") *Petitioner's Statement*, dated June 14, 2018, *supra*.

Petitioner has not brought forth any evidence to show that the amounts claimed by the Secretary were incorrectly calculated. This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or enforceable." (See *Michael R. Bridges*, HUDOHA No. 13-AM-0125-AG-054 (August 13, 2013); *Eric and Eliza Rodriguez*, HUDOHA No. 13-AM-0061-AG-023 (April 17, 2013)(citing *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005); *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Here, Petitioner has failed to come forward with any appreciable evidence to meet Petitioner's burden of proof. HUD has no obligation to "stand in the shoes" of Petitioner and to pursue any claim against the title company that Petitioner may or may not have against them. Accordingly, I find that Petitioner is indebted to the Department in the amounts claimed by the Secretary.

Petitioner also appears to raise financial hardship issues for consideration by the Court. This Court is authorized to take into account expenses necessary to run any household, such as expenses for basic food, clothing, and shelter. *Michelle Edwards*, HUDOHA No. 12-M-CH-AWG23, at 3; *In re: Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004). In appropriate cases, this Court has the discretion to modify the Secretary's proposed repayment schedule where there is a *bona fide* showing of financial hardship. 31 C.F.R. §285.11(e)(8)(ii). However, this Court has been reluctant to exercise this discretion in cases where there is insufficient documentary evidence of necessary household expenses. The *Notice of Docketing, Order, and Stay of Referral* entered in this case on May 15, 2018, specifically ordered Petitioner

to file documents in support of any claim of financial hardship. Petitioner has failed to file documentary evidence of essential household expenses to support his claim.

By the Secretary's calculations, Petitioner has a net disposable monthly income of \$2,470.60. *Sec'y Stat.*, Ex. 1, ¶ 9. Therefore, I find that the Secretary's proposed repayment amount of 15% of disposable pay would not create undue financial hardship for Petitioner at this time.

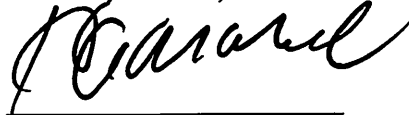
If Petitioner should seek to negotiate a repayment schedule with the Department, Petitioner should be aware that this Court only has the authority to make a "determination of whether the debt is enforceable and past due." (*See Edgar Joyner Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005)). This Court does not have the authority to establish "a debtor's repayment amount or a schedule of payments." *Id.* As such, while Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to "extend, recommend or accept any payment plan or settlement offer on behalf of the Department." *Id.* If Petitioner wishes to discuss a payment plan, Petitioner may discuss the matter with Michael DeMarco the Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859 or write to HUD Financial Operation Center, 50 Corporate Circle, Albany, NY 12203-5121. Petitioner is also entitled to seek reassessment of this financial hardship determination in the future if Petitioner experiences materially-changed financial circumstances. *See* 31 C.F.R. §285.11(k).

ORDER

For the reasons set forth above, 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 hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15% of Petitioner's disposable pay for each pay period.

SO ORDERED,



H. Alexander Manuel
Administrative Judge