

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

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In the Matter of

**PHILLIP LONGORIA,**

Petitioner,

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: 18-AM-0200-AG-102  
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: 721012272  
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:  
: October 10, 2019  
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**DECISION AND ORDER**

On June 19, 2018, Phillip Longoria, (“Petitioner”) 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 garnishment as a mechanism for the collection of debts 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 utilizing the administrative wage garnishment process. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, *et seq.*, as authorized by 24 C.F.R. § 17.81(b).

**BACKGROUND**

On June 9, 2014, Petitioner sought financial assistance from HUD to help him avoid possible mortgage foreclosure by his FHA-insured mortgage lender (“Primary Lender”), who held Petitioner’s primary mortgage note. On or about June 9, 2014, HUD loaned the Petitioner the sum of \$36,076.12, as evidenced by a Subordinate Note, dated May 20, 2014, which Petitioner executed and delivered to the Secretary. (*See Sec’y Stat.*, Exh. 2, Subordinate Note, signed by Petitioner and dated June 9, 2014). The \$36,076.12 sum prevented Petitioner from defaulting on his primary mortgage note. (*See Secretary’s Statement (“Sec’y Stat.”)*, ¶¶ 2-3. Exh. 1, *Declaration of Brian Dillon*, Director, Asset Recovery Division, HUD Financial Operations Center ¶ 4 (“*Dillon Decl.*”).

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. 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 had paid, in full, all amounts due under the primary note which was insured by the Secretary. (*See Sec’y Stat.* ¶ 4; Exh. 2 ¶ 4(A)(i) & (iii)).

On or about June 9, 2017, Petitioner's Primary Lender notified HUD that Petitioner's underlying mortgage had been paid in full. (*Sec'y Stat.*, Exh. 1, *Dillon Decl.* ¶ 4). This pay-off automatically triggered the termination of the Primary Lender's insurance contract with the Federal Housing Administration under the provisions of ¶ 4(A)(i) & (iii) of the Subordinate Note, thus requiring Petitioner to pay the full amount owed under the Subordinate Note to HUD. (*See Sec'y Stat.*, ¶ 5; Exh. 1 ¶ 4).

Thereafter, HUD made demand upon Petitioner to pay the amounts owed, but Petitioner failed to do so. (*See Sec'y Stat.*, Exh. 1, ¶ 5). As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$36,078.12 as the unpaid principal balance as of June 30, 2018;
- b) \$210.35 as the unpaid interest on the principal balance at 1% per annum through June 30, 2018;
- c) \$2,207.23 as the unpaid penalties and administrative costs as of June 30, 2018; and
- d) Interest on said principal balance from July 1, 2018 at 1% per annum until paid

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

On May 24, 2018, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner. (*See Sec'y Stat.*, ¶ 8; Exh. 1, *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.*, Exh. 1, *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* along with the sworn declaration of Brian Dillon, Director, HUD 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, dated June 19, 2018, together with his email correspondence filed on or about June 26, 2018, July 7, 2018, and January 30, 2019, Petitioner

did not directly dispute that he is indebted to the Department in the amounts claimed by the Secretary. (See *Petitioner's email*, dated January 30, 2019). There, Petitioner states:

I'm still amazed that no one understands, or even cares of my position, I am in [sic]. I truly understand the debt I should be paying back . . . but that be said, I'm broke at the end of each month. I the time a sold the house [sic], I didn't even think about all this. Not even a thought in my mind . . . House was being paid off and the loan was taken care of. That should have been the end of it. All this is a complete shock to me. I really don't understand how this can happen. I attached some of my [f]inancial information. I was trying to save my mortgage information but I was having some technical difficulties with the website, its \$1,800.00. I don't know what else to do. I can't afford to be [losing 15%] of my pay.

Although Petitioner states that he faces financial challenges at this time, Petitioner does not deny his indebtedness on the loan at issue in this case. He states "I truly understand the debt I should be paying back . . ." *Id.* He does not state that he has paid any of that indebtedness, and he sets forth no evidence or argument that would render the debt legally, unenforceable. Accordingly, this Court finds that Petitioner is indebted to the Department in the amounts claimed by the Secretary.

The remaining issue is that of financial hardship. This Court is empowered to mitigate the rate at which wages may be garnished, in particular cases, where it is demonstrated that imposition of the Secretary's proposed repayment plan would inflict undue financial hardship on Petitioner. 31 C.F.R. §285.11(k).

On December 19, 2018, Petitioner was notified that he was required to file documentary evidence in support of any claim of financial hardship. *Order for Documentary Evidence*, dated December 19, 2018. That *Order* stated that:

Although Petitioner has filed correspondence on June 20, June 26, and July 11, 2018, those filings do not appear to contain documentary evidence that Petitioner does not owe the alleged debt in this case. And although Petitioner appears to claim financial hardship, Petitioner's filings do not contain documentary evidence that repayment of the alleged debt would cause undue financial hardship for Petitioner.

(emphasis added). Petitioner was ordered to file those documents and was informed that:

Failure to comply with this Order may result in a judgment being entered in favor of the opposing party in this case or such other sanctions as the Administrative Judge deems necessary and proper pursuant to 24 C.F.R. §26.4(d).

*Order for Documentary Evidence*, Dec. 19, 2018 (emphasis in original). On January 30, 2019, Petitioner filed email correspondence that merely reiterated the claim of financial hardship, and provided an incomplete picture of Petitioner's overall financial circumstances. To the extent the Court is unable to discern Petitioner's financial circumstances from his incomplete filings, the Court is disinclined to reach a finding of financial hardship.

Petitioner's pay statement shows a weekly disposable pay amount of \$781.34, resulting in a monthly disposable pay amount of \$3,125.36. Petitioner asserts that his monthly mortgage payment is \$1,800.00. He also shows a monthly electricity bill of \$131; an AT&T cell phone bill of \$322; and a monthly loan payment of \$755 to Bank of West. When measuring the propriety or reasonableness of monthly household expenses, it is the policy of this Court to take into account expenses for basic human habitation, e.g., food, clothing, shelter, medical expenses, transportation, number of dependents, etc., even without explicit documentation of such. However, this Court will discount documentation or evidence consisting of payment for extravagant expenses that are deemed to be unnecessarily incurred. See, *In re Loera*, HUDBCA No. 03-A-CH-AWG28 (HUDBCA Jul. 30, 2004)

Again, because Petitioner has provided an incomplete picture of his financial situation, the Court's calculations may well enure to Petitioner's detriment. The above-listed monthly expenses total \$3,008.00. After imputing expenses for food, clothing, or perhaps other necessary expenditures, the total could easily surpass Petitioner's monthly disposable pay of \$3,125.36. On the other hand, the Court has no way of determining the validity or "necessity" of the \$755 monthly loan payment, for instance. Was the loan taken out to pay for necessary medical expenses, or a fancy car, for instance? The Court has no way to tell, and will refrain from guessing.

Accordingly, the Court finds that Petitioner has not shown that undue financial hardship would result from imposition of the Secretary's proposed repayment schedule. However, and pursuant to 31 C.F.R. §285.11(k), Petitioner always has the right to make such a showing, and may contact Michael DeMarco of the HUD Financial Operations Center, 52 Corporate Circle, Albany, N.Y. 12203, tel. no. (518) 862-2801 to demonstrate financial hardship.

### **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 the debt in this case via administrative wage garnishment in the amount of 15% of Petitioner's disposable income per month, or in such other amount as authorized by law.

**SO ORDERED,**

A handwritten signature in blue ink, appearing to read 'H. Alexander Manual', is written over a horizontal line.

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 unless you can demonstrate that you have new evidence to present that could not have been previously presented. You may also appeal this decision to the appropriate United States District Court. For wage garnishments cases, *See* 24 C.F.R. § 17.81, 31 C.F.R. § 285.119f), 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.*