

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

In the Matter of:

**Johnny B. Hamilton ,**

Petitioner.

18-VH-0172-AG-085

780786791

May 23, 2018

**DECISION AND ORDER**

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* ("*Hearing Request*") filed by Johnny B. Hamilton ("Petitioner,"), along with documentation, on May 2, 2018 concerning the existence, amount, or enforceability 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. § 3720A), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts allegedly owed to the United States government.

**JURISDICTION**

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment pursuant to 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f) (8) (i). Thereafter, Petitioner must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f) (8) (ii). In addition, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. Id.

**PROCEDURAL HISTORY**

Pursuant to 31 C.F.R. § 285.11(f) (4), on May 4, 2018, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* ("*Notice of Docketing*"), 2). On July 26, 2018, the Secretary filed his *Statement* along with documentation in support of his position. Petitioner filed certain documentation with his *Hearing Request* but did not subsequently file, in compliance with the Court's Orders, the additional documentary evidence to support his position that the debt does not exist. This case is now ripe for review.

## **FINDINGS OF FACT**

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A, because of a defaulted loan that was insured against non-payment by the Secretary.

On or about August 9, 2004, Johnny B. Hamilton ("Petitioner") executed a Manufactured Home Promissory Note, Security Agreement, and Disclosure Statement ("Note"), in the amount of \$38,212.58, for the purchase of a mobile home. *Secretary's Statement* ("Sec'y. Stat.") ¶ 2, Ex. 1, Note. The Note was insured by the Secretary against nonpayment default pursuant to Title I of the National Housing Act. *Sec'y. Stat.*, ¶ 3.

The Petitioner failed to make payments as agreed in the Note which was subsequently assigned to HUD by Vanderbilt Mortgage and Finance, Inc. HUD has attempted to collect the amount due under the Note, but Petitioner remains in default. *Sec'y. Stat.*) ¶ 5, Ex. 2, *Declaration of Brian Dillon* (*Dillon Decl.*), ¶ 3.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated February 8, 2017, was sent to Petitioner by the U. S. Department of the Treasury, Bureau of Fiscal Services, Debt Management Services. *Sec'y. Stat.*, Ex. 2, ¶ 5. In accordance with 31 C.F.R. 285.11(e) (2) (ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD.

Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$3,980.07 as the unpaid principal balance as of July 12, 2018;
- b. \$0.00 as the unpaid interest on the principal balance at 1.0% per annum through July 13, 2018; and
- c. Interest on said principal balance from July 14, 2018, at 1.0% per annum until paid.

*Sec'y. Stat.* ¶ 7; *Dillon Decl.*, ¶ 4.

Based on the issuance of the withholding order, Petitioner's wages have been garnished 67 times through July 12, 2018 totaling \$13,541.38. HUD has received 66 garnishment payments totaling \$13,345.66 that are reflected in the balance above, while the one garnishment totaling \$195.72 has not yet been transmitted to HUD from the US Department of Treasury, Financial Management Services. *Sec'y. Stat.*, Ex. 2, *Dillon Decl.*, ¶ 8.

HUD proposes a debt repayment schedule of \$195.72 per pay period, or an amount equal to 15% of Petitioner's disposable income. *Sec'y. Stat.*, ¶ 9; Ex. 2, *Dillon Decl.*, ¶ 9.

## **DISCUSSION**

Petitioner challenges the amount of the debt and maintains that the balance of the subject debt should be the responsibility of his ex-spouse pursuant to the terms of a property settlement agreement reached with his ex-spouse. More specifically, Petitioner contends:

I hired an attorney to do the property settlement and the case has been signed off by the judge. Julia Hamilton, my ex-wife, agreed that 3/6 of the debt was hers since we were married when the home was purchased, and she knowingly defaulted on the loan. Had I been made aware of the default; it would have been caught up.

I am including a copy of the court documents. The original amount of the debt was \$20,019.84. As of April 23, 2018, the balance is \$7912.94. I have paid \$12,106.90, which is more than 1/2 of the debt. I ask that you please review the information I have submitted and stop the garnishment on my wages and begin to garnish Julia Hamilton's wages for the balance owed.

*Hearing Request at 1.*

Along with his *Hearing Request*, Petitioner introduced into evidence a copy of a *Voluntary Partition of Community Property Agreement (Property Agreement)* between the spouses that was issued by the 23<sup>rd</sup> District Court of the State of Louisiana. *Hearing Request*, Attachments.

After reviewing the *Property Agreement* offered by Petitioner, the Court has determined that this agreement alone is insufficient to prove that the remaining balance of the subject debt is unenforceable against Petitioner. The Secretary's right to collect the alleged debt in this case emanates from the terms of the Note. *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the subject debt, he must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release Petitioner from his obligation. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518-H51 (January 27, 1988); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986).

Petitioner herein did not provide sufficient evidence to show that he was released from his contractual obligation to pay this debt. As a result, Petitioner remains jointly and severally liable with his former spouse for repayment of the debt according to the terms of the *Note*. The Secretary may proceed against any co-signer for the full amount of the debt. Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003). The *Property Agreement* only determined the rights and liabilities between Petitioner and his former spouse, but not the rights and liabilities between Petitioner and third parties such as HUD in this case. Kimberly S. Kim. (Thiedel), HUDBCA No. 89-4587-L74 (April 23, 1990). So, the *Property Agreement* purporting to release Petitioner from his joint obligation does not affect the claims of HUD as an existing creditor unless HUD, the creditor, was a party to the action. Janet T. Rodocker, HUDBCA No. 00-A-CH-AA17 (May 22, 2000). It is evident from the terms of the *Property Agreement* that HUD was not a party to this agreement, so the Court finds that Petitioner remains indebted to HUD in the absence of sufficient evidence to prove otherwise.

As a recourse, Petitioner may seek to enforce, in the state or local court, the *Property*

*Agreement* that was approved and homologated by the local court so that Petitioner may recover from his former spouse monies paid by him to HUD in satisfaction of the subject debt. See William Holland, HUDBCA No. 00-A-NY-AA83, dated Oct. 12, 2000; Michael York, HUDBCA No. 09-1-1-CH-AWG36 dated June 26, 2009, at 3. Such course of action however is not within the jurisdiction of this Court. It instead would be separate and distinct course of action from this proceeding.

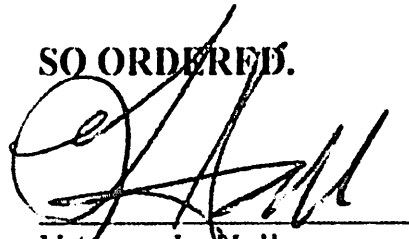
### **ORDER**

Based on the foregoing, the Court finds that the debt that is the subject of this proceeding exists and is enforceable against Petitioner in the amount so claimed by the Secretary.

The Order that imposed, on May 4, 2019, 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 at 15% of Petitioner's disposable income.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read 'Vanessa L. Hall', is written over a horizontal line.

Vanessa L. Hall

Administrative Judge

the date of the written decision, and shall be granted only upon a showing of good cause.