

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

In the Matter of:

**Quincey Richmond,**

Petitioner.

18-VH-0187-AG-096

721007973

November 15, 2019

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing (Hearing Request)* filed on June 16, 2018, by Petitioner Quincy Richmond (“Petitioner”) 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”). This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720A) and applicable Departmental regulations.

**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. This hearing is conducted in accordance with the procedures set forth at 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 16, 2018, this Court stayed the issuance of a wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”) at 2. On June 14, 2018, the Secretary filed his *Statement (Sec’y. Stat.)* along with documentation in support of his position. In response to the *Secretary’s Statement*, Petitioner filed, on June 19, 2018, a written statement and certain documentation in support of his position. 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 January 16, 2014, Quincey Q. Richmond, executed and delivered to the Secretary a *Subordinate Note* ("Note") in the amount of \$42,604.79. *Sec'y Stat.*, ¶ 2; Ex. 1, *Declaration of Brian Dillon*<sup>1</sup> ("*Dillon Decl.*"), ¶ 4. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured mortgage lender, which was the holder of Petitioner's primary mortgage note ("Primary Note"). In exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y Stat.*, ¶ 3; Ex. 1, *Dillon Decl.*, ¶ 4.

By terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs (4)(A)[o]n April 1, 2045 or, if earlier, when the first of the following events occurs: (i) borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary; or (ii) the maturity date of the primary note has been accelerated; or (iii) the primary note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary; or (iv) the property is not occupied by the purchaser as his or her principal residence. *Sec'y Stat.*, ¶ 3; Ex. 2, Note.

On or about October 15, 2014, the FHA mortgage on Petitioner's primary mortgage was terminated. *Sec'y Stat.*, ¶ 5; *Dillon Decl.* ¶ 4. The Note became immediately due and payable, pursuant to the terms of the Note. *Sec'y Stat.* ¶ 6; Ex. 1, *Dillon Decl.*, ¶ 4.

HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y Stat.*, ¶6; *Dillon Decl.*, ¶ 5. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a. \$42,604.79 as the unpaid principal balance as of May 30, 2018;
- b. \$1,277.64 as the unpaid interest on the principal balance at 1 % per annum through May 30, 2018;
- c. \$5,980.29 as the unpaid penalties and administrative costs as of May 30, 2018; and
- d. interest on said principal balance from May 31, 2018 at 1 % per annum until paid.

See *Sec'y Stat.*, ¶ 7, Ex. 1, *Dillon Decl.*, ¶ 5.

On March 1, 2018, a *Notice of Intent to Initiate Wage Garnishment Proceedings* ("Notice") was mailed to Petitioner's last known address. *Sec'y Stat.*, ¶ 8; *Dillon Decl.*, ¶ 7. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement. Petitioner did not enter into a repayment agreement or pay the debt in full in response to the *Notice*. *Id.*

The Secretary proposes a repayment schedule of \$1384.08 per month which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or an amount equal to 15% of Petitioner's disposable income. See *Sec'y Stat.*, ¶ 10.

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<sup>1</sup> Brian Dillon is the Director of the Asset Recovery Division of HUD's Financial Operations Center.

## DISCUSSION

Petitioner maintains that he should not be held responsible for the subject debt because: 1) the debt does not exist; and, 2) imposition of the proposed wage garnishment would create a financial hardship.

First, Petitioner's contention that the subject debt does not exist fails for lack of proof. For Petitioner not to be held liable for the subject debt, he must produce evidence of either (1) a written release from HUD specifically discharging Petitioner's obligation for payment of the alleged debt; or (2) evidence of valid or valuable consideration paid to HUD that released Petitioner from her obligation or was accepted by the lender with the intent to release Petitioner from her legal 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). In this case, Petitioner has failed to produce evidence of a written release from HUD that would otherwise discharge him from the debt associated with the Subordinate Note or produce evidence of valuable consideration that he paid directly to HUD in satisfaction of the subject debt. Thus, the Court must rely on what is reflected in the record of this proceeding to make its determination.

The Note herein is a separate and distinct contract from the primary mortgage. The language in the Note indicates, in unambiguous terms, that the subject debt becomes due when Petitioner pays "in full all amounts due under the primary Note." *Sec'y. Stat.*, Ex. 2 ¶ 4(A)(i). On or about October 15, 2014, Petitioner's primary mortgage was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec'y. Stat.* ¶ 5, Ex. 1, *Dillon Decl.*, ¶ 4; Ex. 2, Note, ¶ 4(A)(i) & (iii). This event triggered the timeline for the Note to become due. As such, Petitioner's contractual obligation to pay on the Note remained intact. Without evidence from Petitioner to refute or otherwise rebut what the Secretary has presented, the Court is unable to determine the credibility of Petitioner's claim that the subject debt does not exist.

Next, Petitioner's claim of financial hardship likewise fails for lack of sufficient proof. Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), Petitioner is required to show, by a preponderance of the evidence, that the proposed wage garnishment repayment schedule would create a financial hardship. In a case involving a claim of financial hardship, Petitioner "must submit 'particularized evidence,' including proofs of payment, showing that she will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation." Ray J. Jones, HUDAJF 84-1-OA at 2 (March 27, 1985). Such requirement was also noted in Petitioner's *Hearing Request* form in which it was stated "You must provide a signed financial statement along with copies of earnings and income records **and** proof of expenses." (Emphasis added). Herein, Petitioner only submitted a copy of a completed *Consumer Debtor Financial Statement* as evidence. This evidence, alone, is not sufficient as credible because it merely alleges certain expenses without proofs such as receipts of actual payments to substantiate Petitioner's claimed expenses. As a result, the additional evidence that was needed as required

by the *Hearing Request* and the *Notice of Docketing* was not provided by Petitioner to be made a part of the record for review.

In the absence of documentary evidence that supports Petitioner's alleged income, expenses, and potential financial hardship, the Court is unable to determine whether the Secretary's proposed wage garnishment repayment schedule would have created a financial hardship for Petitioner. 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 unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, the Court finds Petitioner's claim of financial hardship fails for lack of sufficient proof.

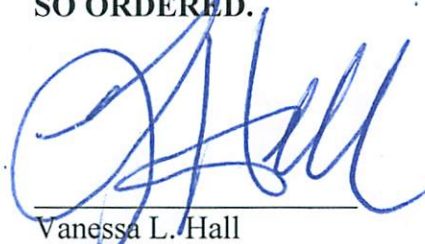
While Petitioner's financial challenges may persist to date and his desire to negotiate repayment terms with the Department may remain, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Michael DeMarco, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

### **ORDER**

Based on the foregoing and what is currently in the record, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount equal to 15% of Petitioner's monthly disposable income.

**SO ORDERED.**



Vanessa L. Hall  
Administrative Judge

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**Review of determination by hearing officers.** A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.