

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

In the Matter of:

Jeffrey Crouse,

Petitioner.

18-VH-0217-AG-113

721011486

October 22, 2019

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* ("Hearing Request") filed by Jeffrey Crouse ("Petitioner,") on July 31, 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").

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 August 1, 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 August 10, 2018, the Secretary filed his *Statement* along with documentation in support of his position. Petitioner filed, on August 13, 2018, a *Motion to Withdraw Request for Hearing* ("Motion"). The Court denied Petitioner's *Motion* on August 16, 2018 for Petitioner's non-compliance with the Court's previous *Orders* and, on October 15, 2019, the Court issued an *Order of Dismissal* ("Dismissal") to Petitioner for non-compliance. The Court was notified later that Petitioner had actually filed his response and documentary evidence in a timely manner on September 21, 2018. Petitioner's submission however was not reflected in the Court's record due to a database error. Accordingly, the Court issued an *Order on Errata and Withdrawal of Dismissal* on October 21, 2019 to ensure that the record of this proceeding accurately reflected that both parties timely filed their submissions as so ordered. This case is now ripe for review.

BACKGROUND

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

On or about June 2011 and again in July 2013, Jeffrey Crouse ("Petitioner"), the HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Secretary's Statement, Ex. A, Declaration of Kathleen M. Porter*¹ (*Porter Decl.*), ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Id.* In exchange for foreclosure relief, on July 12, 2011 and July 12, 2013, Petitioner executed Subordinate Notes ("Notes") in the amount of \$6,920.58 and \$22,100.83, respectively, in favor of the Secretary. *Secretary's Statement, Ex. B, Notes.*

Paragraph 4(A) of the Notes cite specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. *Secretary's Stat.* ¶ 5, Ex. B, Notes. On or about July 29, 2015, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Secretary's Stat.* ¶ 6, Ex. B, Notes, ¶ 4(A)(i) & (iii); Ex. A, *Porter Decl.* at ¶ 4.

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "**Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 or any such other place as [HUD] may designate in writing by notice to Borrower.**" [emphasis in original]. *Secretary's Stat.* ¶ 7, Ex. B, Notes, ¶ 4(A). Petitioner failed to make payment on the Notes at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent. *Secretary's Stat.* ¶ 8, Ex. A, *Porter Decl.* at ¶ 5.

The Secretary has made efforts to collect the debt amounts due under the Notes but has been unsuccessful. *Secretary's Statement, Ex. A, Porter Decl.*, ¶ 4-5.

A Notice of Intent to Initiate Administrative Wage Garnishment dated July 10, 2018 was mailed to Petitioner. *Secretary's Statement, Ex. A, Porter Decl.*, ¶ 4-5. Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$29,021.41 as the unpaid principal balance;
- b. \$290.04 as the unpaid interest on the principal balance at 1% per annum;
- c. \$1,747.09 as the unpaid penalties;
- d. \$35.33 as the unpaid administrative costs; and
- e. Interest on said principal balance from August 1, 2018 at 1% per annum until paid. *Secretary's Statement, Ex. A, Porter Decl.*, ¶ 4-5.

¹ Kathleen M Porter is the Acting Director of Asset Recovery Division for the U.S. Housing and Urban Development.

The Secretary proposes a debt repayment schedule of \$863.72 per month, or an amount equal to 15% of Petitioner's disposable income. *Secretary's Stat.*, ¶ 19, Ex. A, ¶ 9.

DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims that the proposed garnishment amount would cause a severe financial hardship. More specifically, Petitioner states:

The Petitioner was not aware that this additional loan or lien was truly owed until paperwork for wage garnishment was sent to his parents' home, located at 3105 Birch Street, Lincolnton, NC, where he had not resided for many years. After speaking with several representatives from 'HUD' since receiving the paperwork, the Petitioner is now aware of the additional Deeds of Trust from owning of the home. The Petitioner is still trying to recover financially from the burdens of his years living in Roanoke Rapids, NC, from 2010-2015.

Response from Petitioner (Pet'r. Doc. Evid.), Attachments, filed September 21, 2019. Petitioner further requests that the Court finds that he is already financially struggling and that a 15% garnishment would financially burden the Petitioner even more. *Id.*

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).

Herein, Petitioner offered into evidence copies of proofs of payment for essential monthly expenses along with the payment stubs for Petitioner and his spouse to support the calculated combined disposable income for their household. *Response from Petitioner, Attachments*. Petitioner's disposable pay is determined after the deduction of health insurance premiums and any amounts required by law to be withheld . . . [including] amounts for deductions such as social security taxes and withholding taxes. 31 C.F.R. § 285.11(c). Also included in Petitioner's disposable income is the monthly income of his spouse at \$1064.37, after deductions required by law. Petitioner's remaining balance for his monthly disposable pay, after deducting allowable deductions, is \$ 2764.40. *Id.* The combined disposable income for Petitioner's household, including the disposable income of his spouse, is \$3828.77.

Petitioner offered additional documentary evidence along with proofs of payment to substantiate the following essential monthly expenses: rent, \$ 675.00; electricity, \$ 125.00; auto insurance, \$156.43; phone, \$280.00; automobile loan, \$ 367.62; gasoline/automobile, \$135.00; credit card payments, \$25.00; school lunch, \$ 70.00; food, \$135.00; prescriptions, 10.00; and, federal and state taxes (combined), \$ 115.00.

Based on the evidence offered by Petitioner for the Court's review, Petitioner's essential

monthly expenses total \$2094.05 per month. Petitioner's monthly disposable pay based on the total household income of \$3828.77, less essential monthly expenses of \$2094.05, yields a positive balance of \$1734.27. A 15% garnishment rate of Petitioner's combined monthly disposable income of \$3828.77 would result in a garnishment amount of approximately \$ 574.31 per month. Deduction of \$ 574.31 from Petitioner's monthly balance would yield \$1149.96 as the remaining balance at the end of the month. As a result, the Court finds that the proposed garnishment amount would not create a severe financial hardship as so claimed by Petitioner. Even after deducting the proposed garnishment amount, the remaining balance at the end of each month for Petitioner would more than sufficiently cover other miscellaneous expenses claimed by Petitioner that the Court deemed non-essential (i.e. gym membership, dance/music/camp lessons).

The Secretary seeks authorization of a repayment schedule to recover the subject debt at 15% of Petitioner's disposable income. As support, the Secretary produced a copy of the Notes in which Petitioner promised that all amounts due under the Notes shall become immediately due... "(2) if I breach any promise in this Note or in the Contract." *Secretary's Stat.*, Ex. B, **ADDITIONAL TERMS**. Such has occurred in this case and as promised Petitioner must comply with the terms of the agreement since Petitioner has not met his burden of proof of hardship. Without sufficient evidence from Petitioner to refute or rebut the evidence presented by the Secretary, the Court finds that Petitioner's claim of hardship fails for lack of sufficient proof and, as a result, Petitioner remains contractually obligated to pay the subject debt in the amount claimed by the Secretary.

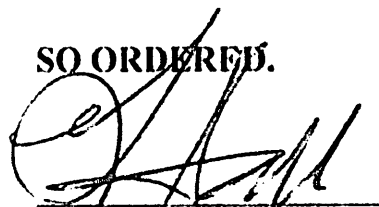
ORDER

Based on the foregoing, the Court finds that the debt that is the subject of this proceeding is enforceable in the amount alleged by the Secretary.

The Order imposing the stay of referral of this matter on August 1, 2018 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.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of the 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.