

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

In the Matter of

Ronnie E. Chavis,

Petitioner.

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: 19-AM-0213-AG-066
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: 5529744 LL 9244
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: July 24, 2020
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DECISION AND ORDER

On or about July 24, 2019, Ronnie E. Chavis (“Petitioner”) filed a Request for Hearing concerning the amount and proposed repayment schedule 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 garnishments as a mechanism for the collection of debts owed to the United States government.

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

BACKGROUND

On February 25, 1993, Petitioner executed and delivered a Retail Installment Contract (“Note”) to Showcase Homes, Inc. The Note was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). Showcase Homes, Inc. loaned the Petitioner the sum of \$15,812.00. (See Secretary’s Statement (“Sec’y Stat.”), ¶ 2; Exh. A, Note).

Pleasant Valley Mobile Homes assigned the Note to Logan-Laws Financial Corporation (“Logan-Laws”). (Sec’y Stat., ¶ 3; Exh. B, Declaration of Rene Mondonedo, Director, Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association, ¶ 3 (“Mondonedo Decl.”)). Logan-Laws was defaulted as an issuer of Mortgage Backed Securities due to its failure to comply with the Government National Mortgage Association’s (“GNMA”) Mortgage Backed Securities requirements. (Sec’y Stat., ¶ 4; Exh. B, Mondonedo Decl., ¶ 4). Upon default by Logan-Laws, all of its rights, title, and interest in Petitioner’s loan were assigned to GNMA by virtue of the Guaranty Agreement entered into between Logan-Laws and GNMA. (Sec’y Stat., ¶ 5; Exh. B, Mondonedo Decl., ¶ 4). GNMA, a

division of HUD, is the rightful holder of the Note, so the Secretary is entitled to pursue repayment from Petitioner. (Sec’y Stat., ¶ 6; Exh. B, Mondonedo Decl., ¶ 5).

Petitioner is currently in default on the Note. (Sec’y Stat., ¶ 7; Exh. B, Mondonedo Decl., ¶ 6). The Secretary’s efforts to collect the amount due from Petitioner have been unsuccessful. Id. As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$10,538.10 as the unpaid principal balance;
- b) \$0 as the unpaid interest on the principal balance through September 23, 2019; and
- c) interest on said principal balance at 1% per annum from September 24, 2019 until paid.

Id.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated July 24, 2019, was sent to Petitioner. (See Sec’y Stat., ¶ 8; Exh. B, Mondonedo Decl., ¶ 7). Petitioner has not entered into a written repayment agreement in response to the Notice. (See Sec’y Stat., ¶ 9; Exh. B, Mondonedo Decl., ¶ 8). Petitioner requested a hearing in connection with the Note in order to contest the alleged indebtedness and proposed repayment schedule in this case.

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 any proposed repayment schedule are unlawful, or that the alleged debt is legally unenforceable. Id.

As evidence of the Petitioner’s indebtedness, the Secretary has filed the Secretary’s Statement (Sec’y Stat.) along with the sworn declaration (Exh. B, Mondonedo Decl.) of Rene Mondonedo, Director of the Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association, 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, Petitioner indicated that he does not owe the full amount of the debt. Specifically, Petitioner explains that he was not responsible for making payments on the home, as he entered into an agreement with another individual for that individual to make payments on the home. For Petitioner not to be held liable for the full amount of the debt, there must either be a release in writing from the lender specifically discharging Petitioner’s obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (Feb. 28, 1986). Here, Petitioner has submitted no evidence to establish the requirements for a valid release.

Additionally, agreements external to the Note do not extinguish Petitioner's liability for the full amount of the debt. See In the Matter of Cynthia Abernethy, HUDBCA No. 04-D-CH-AWG41 (Mar. 23, 2005) (holding that a divorce settlement entered into between two parties would not release either borrower of their obligations under the Note if the lender was not a party to the agreement). In this case, neither the Secretary nor the lender was a party to the agreement between Petitioner and the other individual that purported to release Petitioner of his obligations under the Note. Petitioner may enforce the agreement with the other individual in state or local court to recover monies paid to HUD by him to satisfy this obligation. However, this does not preclude the Secretary from enforcing the debt against Petitioner. Deborah Gage, HUDBCA No. 86-1276-F283 (Jan. 14, 1986). Therefore, Petitioner remains indebted based on the terms of the Note, and the Secretary has the right to seek repayment of the debt from Petitioner directly.

Petitioner also claims that garnishment of his pay in the amount proposed by the Secretary would cause him financial hardship. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed September 13, 2019). This Court has held that financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. In re Raymond Kovalski, HUDBCA No. 87-1681-G18 (Dec. 8, 1986). However, the existence of financial hardship requires a mitigation of the amount of garnishment allowable by law. 31 C.F.R. § 285.11(k)(3).

Petitioner bears the burden of proving, by a preponderance of the evidence, that the terms of the Secretary's proposed repayment schedule would create the claimed financial hardship. 31 C.F.R. § 285.11(f)(8)(ii). In support of his financial hardship claim, Petitioner produced a copy of his pay statement for the month of August 2019. Based on Petitioner's pay statement, his average gross salary is \$3,013.08 per month. Therefore, Petitioner's disposable pay for the purposes of this Court's analysis is \$2406.82, or his gross pay of \$3,013.08 less social security and withholding taxes totaling \$496.26, and less his health insurance premium in the amount of \$110. See 31 C.F.R. § 285.11(c) (defining disposable pay as "that part of the debtor's compensation from an employer remaining 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.").

Petitioner has also filed credible evidence of the following essential household expenses: electricity (\$218.38); home phone and internet (\$111.22); and car payment (\$332.57). Additionally, the Court has previously ruled that credit may be given for certain essential living expenses based on a petitioner's estimates when the "financial information submitted by Petitioner ... [was found to be] generally credible" In re Elva and Gilbert Loera, HUDBCA No. 03-A-CH-AWF28 (July 30, 2004). Petitioner's estimates of his monthly cell phone, grocery, and gasoline expenses are generally supported by the documentary evidence provided, and well within reasonable consumption patterns. Therefore, in accordance with Loera, the Court will credit Petitioner with monthly expenses of \$65.90 for his cell phone bill, \$300.00 for groceries, and \$160.00 for gasoline.

Petitioner also provided evidence of several monthly expenses that the Court will not credit against his disposable pay. Such expenses include credit card payments and payments toward a personal loan. With no further evidence of what these payments go toward, such as

identifying essential household expenses that were charged to these accounts, the Court cannot conclude that these payments are for essential household expenses. See Charles R. Chumley, HUDOA No. 09-M-CH-AWG09 (Apr. 6, 2009). Accordingly, these expenses will be excluded from the Court's financial hardship determination.

In sum, the Court will credit Petitioner with a total of \$1,188.07 for essential monthly living expenses. Deducting this amount from his monthly disposable pay of \$2,406.82 leaves a remaining balance of \$1,218.75 per month. A 10% garnishment of Petitioner's monthly disposable income, as proposed by the secretary, would equal \$240.68, leaving Petitioner with \$978.07 to cover his any remaining monthly expenses. Upon consideration of the evidence of record, it is my determination that the proposed garnishment will not cause Petitioner financial hardship. I therefore find that the debt remains past due, and that Petitioner remains indebted to HUD in the amount claimed by the Secretary.

ORDER

It is hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding debt by means of administrative wage garnishment in the amount of 10% of Petitioner's disposable pay.

SO ORDERED,



H. Alexander Manuel
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 absent a showing of compelling legal argument or new evidence that could not have been previously presented. You may also appeal this decision to the appropriate United States District Court. For wage garnishment cases, *See* 24 C.F.R. § 17.81, 31 C.F.R. § 285.11(f), 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.*