

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

In the Matter of:

Joseph Frame,

Petitioner

19-VH-0204-AG-061

721013263

July 30, 2020

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing (Hearing Request)* filed on September 10, 2019, by Petitioner Joseph Frame (“Petitioner”) concerning the existence, amount, or enforceability of the payment schedule of a debt allegedly owed to the United States 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. 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 bears 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 September 10, 2019, this Court stayed the issuance of a wage garnishment order and suspended any existing withholding order until the issuance of this decision. *Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”) at 2. On October 16, 2019, the Secretary filed his *Statement (Sec’y Stat.)* along with documentary evidence in support of his position. This Court issued an *Order for Documentary Evidence* on December 12, 2019, ordering Petitioner to file documentary evidence supporting his claim of financial hardship. Petitioner complied and submitted documentary evidence consisting of pay statements and other financial documents. 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, as a result of a defaulted loan that was insured against non-payment by the Secretary. The Debt Collection Improvement Act, as amended, authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts allegedly owed to the United States government. 31 U.S.C. § 3720D.

In or about April 2017, Petitioner was facing possible foreclosure of his FHA-insured mortgage. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's primary lender to bring the primary note current. *Sec'y Stat.*, ¶ 3; Ex. A, Declaration of Brian Dillon,¹ ("Dillon Decl."), ¶ 4. On April 4, 2017, in exchange for foreclosure relief, Petitioner executed a subordinate Note ("Note") in the amount of \$30,547.09 in favor of the Secretary. *Sec'y Stat.*, ¶ 4; Ex. A, *Dillon Decl.*, ¶ 4; Ex. B, Note.

Under the terms of the Note, Petitioner was to pay the principal amount of the unpaid balance on the Note until it was paid in full. *Sec'y Stat.*, Ex. B, ¶ 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 the payment in full of the primary note and related mortgage. *Sec'y Stat.*, ¶ 5; Ex. B, ¶ 4(A)(i).

On or about November 30, 2017, Petitioner's primary lender notified HUD that Petitioner's primary mortgage was paid in full. *Sec'y Stat.*, ¶ 6; Ex. A, *Dillon Decl.*, ¶ 4. This automatically triggered both the termination of the FHA insurance on Petitioner's primary mortgage and the provisions of ¶ 4(A)(i) & (iii) of the Note, requiring Petitioner to pay the full amount owed under the Note to HUD. However, Petitioner failed to make payment as specified within the Note. *Sec'y Stat.*, ¶ 8; Ex. A, *Dillon Decl.*, ¶ 5. Thus, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$25,979.12 as the unpaid principal balance as of August 31, 2019;
- (b) \$21.64 as the unpaid interest on the principal balance through August 31, 2019;
- (c) \$1,769.17 as the unpaid penalties and administrative costs through August 31, 2019;
and
- (d) interest on said principal balance from September 1, 2019 at 1% per annum until paid.

On October 9, 2018, a Notice of Intent to Initiate Wage Garnishment Proceedings ("Notice") was sent to Petitioner. *Sec'y Stat.*, ¶ 10; Ex. A, *Dillon Decl.*, ¶ 6. Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was given an opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms, but Petitioner failed to do so. *Sec'y Stat.*, ¶ 11; Ex. A, *Dillon Decl.*, ¶ 7.

The United States Department of the Treasury issued a Wage Garnishment Order ("WGO") to Petitioner's employer on November 8, 2018. *Sec'y Stat.*, ¶ 17. Pursuant to the WGO, Petitioner's wages have been garnished forty times for a total of \$4,316.99. *Id.*; Ex. A, *Dillon Decl.*, ¶ 8. After reviewing Petitioner's biweekly pay statement for the period ending

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

August 31, 2019, HUD has proposed a repayment schedule of 15% of Petitioner's \$626.98 disposable biweekly pay, or \$94.05.

DISCUSSION

Petitioner maintains that he should not be held responsible for the subject debt because (1) he never requested the foreclosure relief from HUD that the Note provided, and (2) he was not aware of the terms of the Note when he signed it. *Hearing Request* at 1.

After consideration, neither of Petitioner's arguments have the legal effect of discharging his liability for the subordinate note that he signed. The Court acknowledges Petitioner's arguments; however, it is a long-settled point of law that a party who has signed a contract may not avoid his obligations by alleging that he did not read the contract or that he did not understand the terms within. See Upton v. Tribilcock, 91 U.S. 45, 50 (1875) (“[i]t will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained.”).

Even assuming that Petitioner did not request the foreclosure relief, the law imposes upon him an obligation to have read and understood what he was agreeing to when he signed the Note. See In re Brenda Mottler-Race, HUDOA No. 17-VH-0124-AO-067 (August 22, 2019) (“[m]isunderstanding the terms of a contract does not serve as a basis for releasing debtors from the terms of a contract.”). Petitioner signed and executed the Note, and he is therefore bound by the terms contained within, including the terms of repayment. Therefore, the Court finds that the debt to the Secretary is past due and legally enforceable.

Petitioner further contends that imposition of the Secretary's proposed repayment schedule would create an undue financial hardship. While financial hardship does not invalidate a debt or release a debtor from the obligation to pay, financial hardship factors are relevant in determining the amount of administrative garnishment that will be permitted. See Raymond Kovalski, HUDBCA No. 87-1681-G18 (December 8, 1986). Petitioner's disposable income for purposes of administrative wage garnishment is defined as that part of Petitioner's compensation that remains after the deduction of health insurance premiums and any amounts required by law to be withheld. Such deductions include social security taxes and withholding taxes, but not amounts withheld pursuant to a court order. See 31 C.F.R. § 285.11(c).

The Secretary has calculated Petitioner's biweekly net disposable pay as \$626.98 (biweekly gross salary of \$895.50 less allowable deductions of \$268.52). The Secretary's proposed repayment schedule is 15% of Petitioner's biweekly disposable pay, or \$94.05 biweekly. Based on Petitioner's submitted documentary evidence, the Court has conducted its own calculation and reaches a different conclusion.

Before detailing its calculations, the Court informs the parties that the previous garnishments from Petitioner's pay have not been conducted in accordance with 31 U.S.C. § 3720D(b)(1). The relevant wage garnishment statutes and regulations provide that, absent the written consent of the individual, the amount deducted from a debtor's pay “may not exceed 15 percent” of the debtor's disposable pay. See 31 U.S.C. § 3720D(b)(1); 31 C.F.R. § 285.11(i)(2). Many, if not all, of the pay statements submitted by Petitioner reflect garnishment amounts in excess of 15% of Petitioner's disposable pay.

For example, Petitioner's pay statement of August 25, 2019 through August 31, 2019, shows that Petitioner's disposable pay for this biweekly period, after allowable deductions such as health insurance and tax withholding, was \$626.98. Petitioner's pay, if it was garnished at 15% in accordance with 31 U.S.C. § 3720D(b)(1) and 31 C.F.R. § 285.11(i)(2), should have been garnished by \$94.05. However, Petitioner's pay statement reflects a garnishment amount of \$114.30 for this pay period. This \$20 over-garnishment amount appears in many, if not all, of Petitioner's pay statements during the garnishment period reflected in the documents Petitioner submitted. Although this is not relevant to the Court's financial hardship calculation, it is troubling.

Turning to Petitioner's financial hardship claim, the Court finds that Petitioner has produced sufficient evidence for the Court to determine whether the Secretary's proposed garnishment amount would cause financial hardship. As evidence supporting his financial hardship claim, Petitioner submitted weekly pay statements reflecting the period from June 2, 2019 through December 21, 2019, as well as financial documents evidencing his monthly essential expenses. After reviewing these weekly pay statements, the Court finds that Petitioner's average monthly disposable pay after allowable deductions is \$3,113.47. Therefore, Petitioner's average biweekly disposable pay is \$1,556.74.

Based on the financial documents submitted, Petitioner's essential monthly expenses include cell phone payments, \$190.96; electric service, \$141.03; internet service, \$59.98, and; car insurance payments, \$27.01. Petitioner's total for essential monthly expenses is \$418.98. Petitioner's submission of a credit card payment totaling \$300.07, an unlabeled AT&T bill totaling \$259.73, what appears to be a bill for a one-time hospital visit totaling \$174.00, and an unlabeled Progressive Leasing settlement offer totaling \$102.57, were excluded from the Court's calculations because Petitioner has not adequately demonstrated that these expenses are essential. Therefore, the Court finds that Petitioner's biweekly essential expenses, based on his submitted documentary evidence, total \$209.49.

While it is customary for the Court to credit expenses necessary to run any household, such as costs for basic food, clothing, and shelter, such documentation to substantiate these expenses was missing from Petitioner's evidence. Acknowledging that food is a basic essential, the Court has calculated Petitioner's average monthly allotment for food based on the assumption that he provides for a family of four, as reflected in his cell phone payments. Assuming that Petitioner's household consists of two adults and two children, and utilizing the average cost of food provided by the most recent Official U.S.D.A. Average Food Plans report (found at <https://www.fns.usda.gov/cnpp/usda-food-plans-cost-food-reports-monthly-reports>), the Court calculates Petitioner's average monthly allotment for food as \$895.50. Therefore, the Court finds that Petitioner's biweekly allotment for food is \$447.75, and Petitioner's biweekly essential expenses total \$657.24.

Petitioner's biweekly disposable income of \$1,556.74, less his total biweekly essential household expenses of \$657.24, yields a positive balance of \$899.50 to cover non-essential biweekly expenses. At a 15% garnishment rate, Petitioner's biweekly garnishment payment would be \$134.93, and Petitioner would be left with \$764.57 to cover non-essential biweekly expenses. At a 10% garnishment rate, Petitioner's biweekly garnishment payment would be

\$89.95, with a remaining monthly balance of \$809.55; and at an 8% garnishment rate of \$71.96, with a remaining balance of \$827.54.

The Court recognizes that Petitioner likely has other additional monthly essential expenses, such as rent/mortgage payments and gas payments, for which documentation was not provided. Petitioner is apparently supporting a family of four as the sole worker in his household, and these additional essential expenses, as well as the uncertainty created by the COVID-19 pandemic, have persuaded the Court that the Secretary's proposed garnishment rate would impose an undue financial hardship on Petitioner and his family.

Pursuant to 31 C.F.R. § 285.11(f)(11)(iii), this Court has the discretion to modify the Secretary's proposed repayment schedule if there is a bona fide showing of financial hardship based on the record as has been proven in this case. Petitioner has successfully persuaded the Court that imposition of the proposed garnishment amount at the rate of 15% would in fact create a financial hardship for Petitioner.


While the Secretary has proven that the debt is past due and legally enforceable, the 15% garnishment rate is burdensome for Petitioner. The Court will use its discretionary power under 31 C.F.R. § 285.11(f)(11)(iii) to modify the Secretary's proposed repayment schedule by reducing the garnishment rate to 8%. The proposed garnishment rate shall be reduced from 15% to a garnishment rate of 8% of Petitioner's biweekly disposable income, unless Petitioner's financial circumstances otherwise improve in the future.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the United States 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 8% of Petitioner's biweekly disposable income.

SO ORDERED.



Vanessa L. Hall
Administrative Judge