

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS
Washington, D.C.

In the Matter of

HUDOA No: 19-AM-0099-AG-020
HUD Claim No.: 721012503

JAMES CASTRO,

Petitioner.
.....

DECISION AND ORDER

On May 10, 2019, James Castro, (“Petitioner”) filed a Request for Hearing concerning the amount, enforceability, or payment schedule 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. § 3720D), authorizes federal agencies to use administrative wage garnishments as a mechanism for the collection of debts allegedly 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 by means of 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.

BACKGROUND

On or about July 6, 2015, Petitioner sought financial assistance from HUD to help Petitioner avoid possible foreclosure of his mortgage loan with Petitioner’s primary lender. For that purpose, James Castro and Elizabeth Castro executed and delivered to the Secretary a Subordinate Note (“Note”) dated July 6, 2015, in the amount of \$43,928.60. HUD then advanced funds to Petitioner’s FHA-insured mortgage lender, Pacific Union Financial, LLC, which was the holder of Petitioner’s primary mortgage note (“Primary Note”). In exchange for these funds, Petitioner executed the Note in favor of the Secretary. *See Secretary’s Statement*, (“Sec’y. Stat.”), Exhibit 1, *Declaration of Brian Dillon*, (“*Dillon Decl.*”), Director of the Asset Recovery Division of HUD’s Financial Operations Center, ¶ 4.

The express terms of the Note require that the Note becomes due and payable, in full, on July 1, 2045, or earlier if one of several events thereunder occurs:

"(4)(A) [o]n July 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; 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."

Id.

On or about June 29, 2017, the FHA mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated that Petitioner's primary mortgage had been paid in full. *Dillon Decl.*, ¶ 4. Petitioner did not repay the loan to HUD as required under the terms of the Note. HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent and indebted to HUD. *Dillon Decl.*, ¶ 5.

The Secretary maintains that Petitioner is indebted to HUD in the following amounts:

- a. \$43,928.60 as the total unpaid principal balance as of April 30, 2019;
- b. \$585.44 as the unpaid interest on the principal balance at 1% per annum through April 30, 2019;
- c. \$4,208.70 as the unpaid penalties and administrative costs through April 30, 2019; and
- d. interest on said principal balance from May 1, 2019 at 1% per annum until paid. Exhibit 1, ¶ 5.

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

On or about November 9, 2018, a Notice of Intent to Initiate Wage Garnishment Proceedings ("Notice") was mailed to Petitioner. (*See Sec'y Stat.*, ¶ 8; *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 under terms acceptable to HUD (*See Sec'y Stat.*, ¶ 10, *Dillon Decl.*, ¶ 9). Petitioner provided a copy of Petitioner's most recent pay statement for the pay period ending March 31, 2019 (*See Sec'y Stat.*, ¶ 10; *Dillon Decl.*, ¶ 9). As a result, the Secretary proposes a repayment schedule in the amount of \$438.55 per month, or in the alternative, the Secretary proposes a repayment schedule of 15% of the Petitioner's disposable income. *Id.*

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 the proposed repayment schedule are unlawful, would cause an undue hardship to Petitioner, or that the alleged debt is legally unenforceable. *Id.*

As evidence of the Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement*, together with accompanying sworn declarations by Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center, *Sec'y Stat.*, Ex. 1; and copies of the Note, and accompanying notices and documents. (*See Sec'y Stat.*, Ex. 1; Ex. 2). The Court finds the Director's diligence in analyzing Petitioner's claim, and the Director's explanation of that review to be sufficient to prove that Petitioner is indebted to the Department in the amounts claimed by the Secretary. Accordingly, the Court finds that the Secretary has met the Secretary's initial burden of proof.

Petitioner seeks to establish that the alleged debt in this case is not owed, not properly calculated, or is not legally enforceable. Petitioner has filed the *Hearing Request*, dated April 10, 2019, and documentary evidence dated October 21, 2019 and October 28, 2019 as proof that the debt is not owed. Petitioner has not brought forth any evidence to show that the amounts claimed by the Secretary were incorrectly calculated. 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 enforceable." (*See Michael R. Bridges*, HUDOHA No. 13-AM-0125-AG-054 (August 13, 2013); *Eric and Eliza Rodriguez*, HUDOHA No. 13-AM-0061-AG-023 (April 17, 2013)(*citing Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005); *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), *citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

Petitioner claims that the home underlying Petitioner's primary mortgage was sold on June 30, 2017, and that he expected his title company, "Capital Title" to pay off the Note to HUD, along with his primary mortgage to Pacific Union at closing on the sale of the home. However, Petitioner provides no proof that the Note was ever paid, and merely states his "belief" that it was paid. *Petitioner's Statement and Documentary Evidence*, dated October 21, 2019, ¶17. Petitioner states that:

Sometime in late January 2018 or early February 2018 Petitioner receives a letter dated January 16, 2018. The letter is from the U.S. Department of HUD and states that there is a claim for \$43,928.60 and that the claim is for principal. It does not say what the debt is for, it just says, "Your debt with the U.S. Department of Housing and Urban Development" and shows a claim number

of 7-21012503-0. Petitioner's attempts to find out the basis for the debt prove futile. Petitioner has now discovered that unbeknown to Petitioner, Capital Title contacted HUD and had the lien released as to the property. A Release of Lien dated January 26, 2018 was filed in Medina County on February 2, 2018. See attached Exhibit "H". Petitioner *was never contacted about the lien or the release BEFORE it was executed or filed*. Petitioner had no knowledge that Capital Title had not included the lien in favor of HUD in the closing of the sale of the property or that the property was later released from the lien, but the debt was left to Petitioner.

Id. The fact that Petitioner's primary lender and title company did not remind Petitioner of his indebtedness to HUD, does not impact the enforceability of the Note. Petitioner does not deny that he signed the Note, or that he did not repay the debt to HUD. The Secretary provides documentary evidence to show that the Note was never paid, and Petitioner does not provide proof that the Note was ever paid. Therefore, the Court finds that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

Petitioner also claims that repayment of the debt would create undue financial hardship for him. He delineates his income and expenses as follows:

Petitioner's net income	2,106.87	
Spouse's net income	<u>2,550.26</u>	
Monthly income		4,657.13
Mortgage	2,358.84	
Car payments	649.32	
Car insurance	182.89	
Utilities	233.00 (approx.)	
Phone	<u>187.09</u>	
Total		3,611.14
Monthly income	4,657.13	
Monthly bills	<u>-3,611.14</u>	
		1,045.87

Amount remaining for food, clothing and incidentals
for a family of four with two minor children.

In appropriate cases, this Court has the discretion to modify the Secretary's proposed repayment schedule where there is a *bona fide* showing of financial hardship. 31 C.F.R. §285.11(e)(8)(ii). However, we have been reluctant to exercise this discretion in cases where there is insufficient documentary evidence of payment of necessary household expenses.

Petitioner has claimed financial hardship but has only filed limited receipts showing monthly payments.

However, it is customary for this Court to take into account expenses necessary to run any household, such as expenses for basic food, clothing, and shelter. *Michelle Edwards*, HUDOHA No. 12-M-CH-AWG23, at 3; *In re: Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004). Accordingly, the Court will credit the extra sum of \$500 per month for food and other household expenses. But this still allows Petitioner to pay his household expenses within the \$1,000 monthly excess outlined above. Therefore, I find that the Secretary's proposed repayment amount of 15% of disposable pay would not create undue financial hardship for Petitioner at this time.

If Petitioner seeks to negotiate a repayment schedule with the Department, he should be aware that this Court only has the authority to make a "determination of whether the debt is enforceable and past due." (*See Edgar Joyner Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005)). This Court does not have the authority to establish "a debtor's repayment amount or a schedule of payments." *Id.* As such, while Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to "extend, recommend or accept any payment plan or settlement offer on behalf of the Department." *Id.* If Petitioner wishes to discuss a payment plan, Petitioner may discuss the matter with Michael DeMarco the Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859 or write to HUD Financial Operation Center, 50 Corporate Circle, Albany, NY 12203-5121. Petitioner is also entitled to seek reassessment of this financial hardship determination in the future in the event that he experiences materially-changed financial circumstances. *See* 31 C.F.R. §285.11(k).

ORDER

For the reasons set forth above, the Order imposing 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 in the amount of 15% of Petitioner's disposable pay for each pay period.

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 demonstration by the movant that there is substantial new evidence to be presented that could not have been presented previously. An appeal may also be taken of this decision to the appropriate United States District Court. For wage garnishments cases, See 24 C.F.R. § 17.81, 31 C.F.R. § 285.119f), 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.