

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

In the Matter of:

Darrell S. Walker

Petitioner,

21-AM-0123-AG-075

721017204

May 18, 2023

DECISION AND ORDER

On or about April 13, 2021, Darrell S. Walker, (“Petitioner”) filed a Request for Hearing concerning the amount and enforceability 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 utilize administrative wage garnishment 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 allegedly owed to the Department. 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 or about May 22, 2010, Petitioner, Darrell S. Walker and his wife, Amy Walker, entered into and delivered a Partial Claim Promissory Note (“Note”) (effective date May 19, 2023), in the amount of \$7,160.92 to the U.S. Department of Housing and Urban Development. *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable*, ¶ 2, (“*Sec’y. Stat.*”), Note, attached as Exhibit 1 to *Sec’y. Stat.* These funds were advanced to Petitioner for the purpose of preventing his primary lender from foreclosing on his home. *Declaration of Brian Dillon*, Director, Asset Recovery Division, HUD Financial Operations Center, Albany, N.Y., Exhibit 2 to *Sec’y. Stat.*, ¶ 4. Ownership of the Note at issue in this case is not in dispute. The Court therefore, finds that HUD is the rightful owner of the Note, and is entitled to enforce the terms of the Note.

Under the Note’s terms, Petitioner was to pay the principal amount of the unpaid balance until the Note was paid in full. (*See Sec’y. Stat.*, Exh.1). 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 when Petitioner repaid his primary mortgage in full. (*See Sec’y Stat.* ¶ 4; Exh.1 ¶¶ 2-4). On or about December 26, 2019, Petitioner repaid his primary mortgage in full, thereby triggering Petitioner’s responsibility to repay the Note from HUD in full. *Id.* HUD made its

demand upon Petitioner to pay the amounts owed, but Petitioner failed to do so. (*See Sec’y Stat*, ¶ 6; *Exh. 2, Dillon Decl.* ¶ 5). As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$7,160.92 as the unpaid principal balance;
- b) \$83.58 as the unpaid interest on the principal balance through April 30, 2021;
- c) \$484.80 in Assessed Penalty Fee; and
- d) 1 % interest on said principal balance until paid;

(*See Sec’y Stat*, *Exh. 2, Dillon Decl.*, ¶ 5)

The Secretary proposes a repayment schedule of 15% of Petitioner’s disposable pay for each pay period in the amount of \$126.00, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner’s disposable pay. (*See Sec’y Stat.*, *Exh. 2, ¶ 8*). (*See 31 C.F.R. § 285.11(i)(2)(i)(A)*). On February 11, 2021, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) was sent to Petitioner. (*See Sec’y Stat, Dillon Decl.*, ¶ 6). Under 31 C.F.R § 285.11(e)(2)(iii), Petitioner was given the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. (*See Sec’y Stat, Dillon Decl.*, ¶ 7). Petitioner has not entered into a written repayment agreement in response to the Notice. *Id.*

In his *Hearing Request*, dated April 13, 2021, Petitioner provided no documentary evidence to prove that the debt owed to HUD under the terms of the Note was repaid. On or about October 8, 2021, Petitioner filed several pictures of documents that appear to be excerpts of federal regulations that pertain to eviction and trespass violations involved with evicting residents of local housing authority properties. *Petitioner’s documentary evidence*, filed on October 8, 2021.

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 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 (Sec’y Stat)* along with the sworn declaration by Brian Dillon, Director of the Asset Recovery Division of the HUD Financial Operations Center, and a copy of the Note. Accordingly, the Court finds that the Secretary has met the initial burden of proof.

Petitioner's arguments in response to the Secretary's evidence are insufficient to overcome the weight of the Secretary's actual proof. Petitioner has filed no documentary evidence apart from the excerpts of federal regulations pertaining to evictions filed on October 8, 2021. Petitioner makes no factual or legal argument in conjunction with that filing, so it is left to the Court to determine Petitioner's intentions with respect that filing. The Court is unable to discern any appreciable factual or legal argument from Petitioner's filing that could pertain to the alleged debt in this case. If Petitioner claims that he was somehow wrongfully evicted from property governed by his local housing authority, then Petitioner will need to take those claims up in the appropriate local or federal court after exhausting his remedies according to his lease or other legal obligations. Those claims, however, are beyond the jurisdiction of the HUD Office of Hearings and Appeals, and may not be considered in conjunction with the alleged debt in this case.

Petitioner does not deny that he signed the Note on May 22, 2010, and that he received the benefit of those funds as a result. Petitioner has also not come forward with any documentation showing that he repaid the Note in full. The Note provides proof that Petitioner was aware of the debt, and the *Dillon Decl.* provides proof that the debt has not been repaid. Petitioner was also allowed to file documents to prove that imposition of a repayment schedule at this time would cause undue financial hardship for Petitioner. But Petitioner has failed to come forward with these documents as well.

Petitioner has also not provided any documentary evidence that he relied upon written statements made by HUD officials that his debt was satisfied and/or that the terms of his divorce agreement with his former wife were binding on HUD in this case. Petitioner's unsupported assertion that his former wife is responsible for the debt, or a portion of the debt, is insufficient evidence to establish that HUD may not enforce the Note against him. (*See Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009)).

Petitioner has also not provided evidence of any written release from HUD of his obligation to repay the Note. For the debt to be extinguished, HUD must provide a written release that specifically discharges the debtor's obligation, for valuable consideration accepted by the lender from the debtor, which would indicate intent to release. (*See Franklin Harper*, HUDBCA No. 04-D-CH-AWG41 (March 23, 2005); *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); *Cecil F. & Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); *Jesus E. & Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986)). Petitioner has provided no evidence that he received a written release from HUD, and HUD maintains that it never issued or authorized the issuance of any instrument or document to cancel, satisfy or release HUD's Note. (*See Sec'y Stat.*, ¶ 8).

The assertion that Petitioner is not responsible for the debt when HUD has not released him is without merit. (*See Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003) (citing *Wendy Kath*, HUDBCA No. 89-4518-L8, at 2)). Petitioner has failed to submit any documentary evidence to prove that he is not indebted to HUD. I therefore find that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

DETERMINING REPAYMENT

In the absence of documentary evidence proving financial hardship, this Court determines that the proposed garnishment would not create undue hardship for Petitioner. Therefore, I find that the Secretary is entitled to enforce the debt in the amount of 15% of Petitioner's disposable income. Petitioner should be aware that he is entitled to seek reassessment of this financial hardship determination in the event that he experiences materially changed financial circumstances. (See 31 C.F.R. §285.11(k)). If Petitioner seeks to negotiate a repayment schedule with HUD, he should be aware that this Court only has the authority to find financial hardship, and 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 Secretary, 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, Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859, or write to HUD Financial Operation Center, at 50 Corporate Circle, Albany, NY 12203-5121.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is:

ORDERED that 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 administrative wage garnishment in the amount of 15% of Petitioner's disposable income per month, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable income per month.

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 unless you can demonstrate that you have new evidence to present that could not have been previously presented. You may also appeal 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.*