

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

In the Matter of:

Tony Oxford,

Petitioners

21-AM-0168-AG-089

0722959

October 25, 2022

DECISION AND ORDER

On or about June 16, 2021, Tony Oxford, (“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 the 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 May 9, 1995, Petitioner and his former wife executed a Retail Installment Sales Contract – Security Agreement (“Note”) for the principal amount of \$23,036.50 to finance the purchase of a manufactured home. (*See Secretary's Statement*, (“*Sec'y Stat.*”), ¶ 2; Exh 1, Note). The Note was assigned to Oakwood Acceptance Corp, and was defaulted by the Government National Mortgage Association (“Ginnie Mae”), a wholly owned government corporation within HUD, upon Oakwood’s failure to comply with Ginnie Mae program requirements. (*See Sec’y Stat.*, ¶ 1, 3; Declaration of Sharon Wandrick, Supervisor of the Monitoring and Surveillance Division of Ginnie Mae (“Wandrick Decl.”), ¶ 3-5). Oakwood’s rights and interests were thereafter assigned to Ginnie Mae. (*See Wandrick Decl.*, ¶ 4). 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. (*See Exh. 1, Note*). Petitioner failed to make payments and defaulted on the Note. (*See Sec’y Stat.*, ¶ 4; Exh. 2, Wandrick Decl., ¶ 6).

Thereafter, HUD attempted to collect the amounts owed by Petitioner, but Petitioner failed to pay. (*See Sec’y Stat.*, ¶ 5; Exh. 2, Wandrick Decl., ¶ 6). As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$16,628.46 as the unpaid principal balance;
- b) \$3,772.85 as the unpaid interest on the principal balance through January 12, 2022;
- c) \$1,083.14 in administrative fees through January 12, 2022; and
- d) interest on said principal balance at 2% per annum until paid.

(*Sec'y Stat.*, ¶ 7; Exh. 2, Wandrick Decl., ¶ 6).

On or about June 2, 2021, a Notice of Intent to Initiate Wage Garnishment Proceedings (“Notice”) was mailed to Petitioner. (*See Sec'y Stat.*, ¶ 6; Exh. 2, Wandrick Decl., ¶ 7). 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, which he has not done. (*See Sec'y Stat.*, ¶ 6; Exh. 2, Wandrick Decl., ¶ 7-8). Petitioner has not provided a copy of his most recent pay statement to HUD, and as a result, the Secretary has proposed a repayment schedule of 15% of the Petitioner’s disposable income. (*See Sec'y Stat.*, ¶ 9; Exh. 2, Wandrick Decl., ¶ 8).

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 a copy of the Note (Exh. 1, Note) and the sworn Declaration of Sharon Wandrick, Supervisor of the Monitoring and Surveillance Division of Ginnie Mae (Exh. 2, Wandrick Decl.). Accordingly, this Court finds that the Secretary has met her initial burden of proof.

In his *Request for Hearing*, Petitioner claims that the alleged debt is not enforceable against him on the grounds that his former wife, who also signed the Note, was to make the payments pursuant to a divorce agreement. (*See Request for Hearing*). Apart from this allegation, Petitioner does not provide any documentary evidence that the alleged debt is not past due or that it is unenforceable.

In response to Petitioner’s *Request for Hearing*, the Secretary produced the *Secretary's Statement*, arguing that the terms of Petitioner’s divorce with his former wife are not binding on HUD because HUD was not a party to the proceeding. (*See Sec'y Stat.*, ¶ 8). The Secretary further contends that Petitioner and his former wife, as co-signers on the Note, are jointly and severally liable for the repayment of the entire debt, and that HUD has not released Petitioner

from liability for the debt. *Id.* To assist Petitioner, the Secretary points out that, under the guidance of counsel and separate from this proceeding, Petitioner may wish to pursue an indemnification action in the state or local courts against his former wife to enforce the divorce agreement. *Id.*

Even following this Court's *Order for Documentary Evidence*, Petitioner has not produced documentary evidence that the debt is not due and enforceable. 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)). Moreover, Petitioner has not proven that he has repaid the Note in full.

Petitioner has also not provided evidence of any release from HUD of his obligation to repay the Note. (*See Sec'y Stat.*, ¶ 8). 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 unreasonable, unjust, and entirely without merit. Petitioner provides no legal authority or language in the Note that suggests that HUD is bound by his divorce agreement. HUD, as a third-party creditor, is not bound by a settlement, divorce decree, or other debt transfer agreement between parties when HUD is not a party to the instrument or arrangement. (*See Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003) (citing *Wendy Kath*, HUDBCA No. 89-4518-L8, at 2)). Therefore, I find that, because HUD did not agree to this transfer of its debt obligation between Petitioner and his former wife, HUD's interest is unaffected and Petitioner remains indebted to HUD, notwithstanding his divorce agreement.

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

Petitioner has failed to come forward with documentary evidence, such as his paystub or itemized receipts for essential household expenses, to establish that repayment of this debt would create undue financial hardship. In the absence of documentary evidence, this Court determines that the proposed garnishment would not create undue hardship for the 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