

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

In the Matter of:

**Michael Georgia,**

Petitioner

23-VH-0089-AG-051

721019294

April 11, 2024

**DECISION AND ORDER**

This proceeding is before the Court upon a *Request for Hearing (Hearing Request)* filed on May 9, 2023, by Michael George (“Petitioner”) concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations.

**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 has 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 May 10, 2023, this Court stayed the issuance of a wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”) at 2. On July 5, 2023, the Secretary filed her *Statement (Sec’y. Stat.)* along with documentation in support of her position. In response to the *Secretary’s Statement*, Petitioner filed a written *Statement* along with documentary evidence in support of his position on September 8, 2023. This case is now ripe for review.

## FINDINGS OF FACT

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, because of a defaulted loan that was insured against non-payment by the Secretary.

In or about September 2021, the HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current.

In exchange for foreclosure relief, on September 10, 2021, Petitioner executed a Subordinate Note ("Note") in the amount of \$15,420.31 in favor of the Secretary. Paragraph 4(A) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. On or about December 6, 2021, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full.

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "**Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410** or any such other place as [HUD] may designate in writing by notice to Borrower. Borrower failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent.

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts through May 30, 2023:

- (a) \$15,420.31 as the unpaid principal balance;
- (b) \$38.37 as the unpaid interest on the principal balance at 1% per annum; and
- (c) Interest on said principal balance from May 31, 2023 at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated March 21, 2023, ("Notice") was sent to Petitioner. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. Petitioner did not enter into a written repayment agreement in response to the Notice.

HUD attempted to obtain a copy of a recent pay statement from Petitioner but was unsuccessful. In the absence of financial documentation from Petitioner, HUD's proposed repayment schedule is \$428.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay.

Based on the foregoing, the HUD respectfully requests that the Court find Petitioner's debt past due and legally enforceable and the Secretary's proposed repayment schedule fair.

### DISCUSSION

Petitioner claims that he does not owe the debt first, because it was already paid in full, and second, because there was insufficient notice. More specifically, Petitioner contends that he "does not owe the Federal Government, as it was taken into [the] responsibility of Community Bank N.A. [formerly Elmira Savings Bank], as stated by Ms. Cassandra Moore [loan mitigation specialist at Elmira Savings Bank]. Ms. Cassandra Moore admits that any debt paid is forwarded to HUD through the official channels at Community Bank N.A., formally known as 'Elmira Savings Bank.' Ms. Cassandra Moore has agreed that the debt was paid to "Elmira Savings Bank" on November 30th and December 2nd, 2021. As support, Petitioner introduced into evidence copies of a Discharge of Mortgage to Elmira Savings Bank from the Chemunga County Clerk's Office; a Notice from the U.S. Department of Treasury to Petitioner regarding completed Tax Offset; letters of communication between Petitioner and the New York Bureau of Consumer Frauds and Protection about the tax offset; and the Notice of Intent to Collect by Administrative Wage Garnishment received by Petitioner.

Upon review, the Court has determined that the record of evidence lacks sufficient proof of payment for the subject debt, or proof that the debt is unenforceable. Petitioner's sole premise relies on his assumption that Elmira Savings Bank paid the subject debt and thereafter released Petitioner from his responsibility for the debt. Petitioner's assumption is erroneous. In the promissory note, Petitioner agreed to pay a principal sum to HUD, the lender in this case, should default occur. That responsibility was not that of Elmira Savings. The Discharge of Mortgage offered by Petitioner as proof of payment was a payment that Elmira Savings made without any authority granted to it by HUD. As a result, that payment made was never applied to the subject debt or credited towards the balance of the subject debt. When default occurred, as it did in this case, the onus fell on the Petitioner to immediately pay what was owed or ensure that it would be paid. Any action or inaction by Elmira Savings Bank does not release Petitioner from his responsibility for the subject debt because Elmira Savings' actions were unauthorized.

For Petitioner not to be held liable for the full amount of the debt, Petitioner must produce either a release in writing directly from HUD, not Elmira Savings, that explicitly releases Petitioner from his obligation under the terms of the Note or produce proof of "valuable consideration accepted by the lender" that indicates HUD's intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Petitioner has failed to produce either in this case. In the absence of such evidence, Petitioner has failed to meet the burden of proof required to prove that the debt is unenforceable. This Court has consistently maintained that "assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due and legally enforceable." *Sara Hedden*, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), *quoting Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, the Court must find that Petitioner's claim of full payment fails for lack of evidence.


Next, Petitioner maintains that “the letter [Notice herein] was *not* sent to the Petitioner’s *current address*.” (Emphasis in original.) As support Petitioner offered a copy of the Notice of Intent that, according to Petitioner, reflected a different address than Petitioner’s current address. As a rule, a Notice of Intent is effective upon dispatch, *if properly and reasonably addressed*.” Kenneth Holden, HUDBCA No. 89-3781-K293 (June 6, 1989) (Emphasis added.) It is well-established that the sending of commercially reasonable notice by the lender, and not evidence of receipt of notice, is determinative of the issue of legally sufficient notice. See 24 C.F.R. § 17.65.

If Petitioner had changed his address, the onus falls on him to notify the Government of such change. This ensures that receipt of mail or related notifications remains uninterrupted for Petitioner. See Appeal of: UPCAR Contractors, Inc., HUDBCA No.81-561-C3 (April 21, 1982) (holding that it is the obligation of a party to notify the Board [herein Court] of any change of address so that it can be served with notices and pleadings or to make other appropriate arrangement for expeditious receipt of mail. Failure to do so is at the risk of the party failing to make such arrangements). In this case, when the Notice was mailed to Petitioner’s last known address of record, Petitioner was properly notified. There is no record of an address change, so the last known address remained intact. Therefore, the Court must find that Petitioner’s claim of insufficient notice is without merit.

### **ORDER**

Based on the foregoing, the Order imposing the stay of referral of this matter on May 10, 2023 to the U.S. 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 of \$428.00 per month or an amount equal to 15% of Petitioner’s monthly disposable income.

SO ORDERED.  
  
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Vanessa L. Hall  
Administrative Judge

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**Finality of Decision.** Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).