

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

In the Matter of:

Dan Burns,

Petitioner.

17-VH-0122-AO-065

78-077752-7

June 13, 2018

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on June 30, 2017, by Petitioner Dan Burns (“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”).

JURISDICTION

The Office of Hearings and Appeals has jurisdiction to determine whether Petitioner’s debt is past due and legally enforceable pursuant to 24 C.F.R. §§ 17.61 *et. seq.* The administrative judges of this Court, in accordance with the procedures set forth at 24 C.F.R. §§ 17.69 and 17.73, have been designated to conduct a hearing to determine, by a preponderance of the evidence, whether the alleged debt is past due and legally enforceable.

PROCEDURAL HISTORY

Pursuant to 24 C.F.R. § 17.81(a), on June 30, 2017, the Court stayed the issuance of an administrative offset of any federal payment due to Petitioner until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* (Notice of Docketing) at 2. On August 7, 2017, Petitioner filed his Statement in support of his position. On October 11, 2017, the Secretary filed a *Secretary’s Statement*, along with documentary evidence, in support of her position. 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 3720A, as a result of a defaulted loan that was insured against non-payment by the Secretary. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. 3720A),

authorizes federal agencies to use administrative offsets as a mechanism for the collection of debts allegedly owed to the United States government.

On or about May 5, 2009, Dan J. Burns ("Petitioner") executed a Manufactured Home Retail Installment Contract and Disclosure Statement (Note) in the amount of \$19,305.00. *Sec'y. Stat.* at ¶ 2, Ex. 1, Note. HUD holds a Manufactured Home Retail Installment Contract and Disclosure Statement (Note) signed by Petitioner. This Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. *Sec'y. Stat.* at ¶ 2, Ex. 2, *Declaration of Gary Sautter*¹ ("*Sautter Decl.*"), ¶ 2-3.

Petitioner failed to make payments as agreed in the Note which was subsequently assigned to HUD. *Sec'y. Stat.* at ¶ 4, Ex. 1, Note; Ex. 2, *Sautter Decl.*, ¶ 2; and, Ex. 3, Assignment of Contract. HUD has attempted to collect the amount due under the Note, but Petitioner remains in default. *Sec'y. Stat.*, Ex. 2, *Sautter Decl.*, ¶ 4.

A Notice of Intent to Collect by Treasury Offset dated September 21, 2017, was mailed to Petitioner. *Sec'y. Stat.*, Ex. 2, *Sautter Decl.*, ¶ 5. In accordance with 31 C.F.R. 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement under terms agreeable to HUD. *Sec'y. Stat.* ¶ 7, Ex. 2, *Sautter Decl.*, ¶ 4. Petitioner, however, did not enter into a written repayment agreement. *Id.*

Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$4,266.26 as the unpaid principal balance as of September 30, 2017;
- b. \$10.65 as the unpaid interest on the principal balance at 1.0% per annum through September 30, 2017; and,
- c. interest on said principal balance from October 1, 2017, at 1.0% per annum until paid.

Sec'y. Stat. ¶ 7, Ex. 2, *Sautter Decl.*, ¶ 4.

The Secretary respectfully requests a finding that the Petitioner's debt is past due and legally enforceable; and that the Secretary may proceed with Administrative Offset against Petitioner.

DISCUSSION

Petitioner does not deny that he owes the subject debt but instead claims that it should not be enforced because it would create a financial hardship. More specifically, Petitioner states that:

He left the property because he could not access the mobile home - he had a leg amputation and was not able to access the home - nor live alone - he had no transportation from the rural location where he lived

¹ Gary Sautter is Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

to Dialysis - I had no choice but to relocate him to Dallas Texas so that he could be taken care of - since he has been here in Dallas - he has had open heart surgery-stomach cancer which has now spread to the liver - We tried to sell the home - we tried to rent it but was not able to- He was in the nursing home for months and continued to pay on the mobile home - up until he could no longer do it. His finances was [sic] greatly impacted - he could not afford to keep the mobile home and pay for living here in Dallas -

Petitioner's *Request for Hearing* filed June 30, 2017.

For Petitioner not to be held liable for the full amount of the subject debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). After a careful examination of the record, the documentation introduced herein by Petitioner does not support Petitioner's claim that the subject debt is unenforceable or paid in full. Instead, Petitioner has introduced into evidence proof of medical records and payments of medical expenses related to his medical diagnoses that more support his financial hardship claim as a basis for not enforcing the subject debt.

The Court acknowledges Petitioner's financial circumstances, but the law requires "unfortunately, in administrative offset cases evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable." *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005); *Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996); *Charles Lomax*, HUDBCA No. 87-2357-G679 (February 3, 1987). Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986).

However, the Court is limited in its ability to consider financial hardship claims in administrative offset cases because no regulation or statute currently exists that permits financial hardship, in whatever form, to be considered as a factor in determining debt collection by means of administrative offset. So, consistent with case law precedent and statutory limitations, the Court finds that financial hardship cannot be considered as a defense in Petitioner's case because the debt owed by Petitioner is sought to be collected by means of administrative offset.

Next, Petitioner states, through his representative, that "If Mr. Burns [Petitioner] is granted the ceasing of his garnishment, can he please have his funds returned to him from the date of garnishment." As a point of clarification, Petitioner's case herein is not an administrative wage garnishment case as referenced. Instead this case was filed by Petitioner as an administrative offset. Consequently, there is no record of a garnishment in place for the Court to cease.

Finally, Petitioner's additional request to have garnished funds returned to him is, again, not within the Court's authority. 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 or Petitioner. Petitioner may wish to discuss this

matter with Counsel for the Secretary or Michael DeMarco, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

Based on the foregoing, Petitioner remains contractually obligated to pay the subject debt in the amount so claimed by the Secretary.

The *Order* imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative offset is **VACATED**. It is hereby

ORDERED that the Secretary is now authorized to seek collection of this outstanding obligation by means of administrative offset in the amount so claimed by the Secretary.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 30 days of the date of the written decision, and shall be granted only upon a showing of good cause.