

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

In the Matter of:

Audra Correll,

Petitioner.

19-AM-0103-AG-023

721013673

April 7, 2021

DECISION AND ORDER

On April 16, 2019, Audra Correll, (Petitioner) filed a Request for Hearing concerning a proposed repayment schedule incident to a wage garnishment order sought by the Secretary relating to a debt owed to the U.S. Department of Housing and Urban Development (HUD). This debt resulted from a defaulted loan which was insured against non-payment by 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. The judges of this Court have been designated to conduct this hearing pursuant to 24 C.F.R. § 17.81(b).

BACKGROUND

The Secretary alleges that, on or about August 2017, the HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. (Declaration of Gary Sautter (Sautter Declaration) at ¶ 4 - Exhibit A). To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. (*Id.*). In exchange for foreclosure relief, on August 24, 2017, Petitioner executed a Promissory Note ("Note") in the amount of \$65,153.33 in favor of the Secretary. (Note - Exhibit B). 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. (Note at ¶ 4(A)(i)). On or about April 3, 2018, 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. (Sautter Declaration at ¶ 4; Note at ¶¶ 4(A)(i) & (iii)).

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "Office of 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." (Note at ¶ 4(B)). Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent. (Sautter Declaration at ¶ 5).

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, the Secretary asserts that Petitioner is justly indebted to the Secretary in the following amounts as of March 31, 2019:

- (a) \$65,153.33 as the unpaid principal balance;
- (b) \$434.16 as the unpaid interest on the principal balance at 1% per annum;
- (c) \$3,174.59 as the unpaid penalties and administrative costs on the balance; and
- (d) Interest on said principal balance from April 1, 2019 at 1% per annum until paid. (Id.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated February 15, 2019 (“Notice”) was sent to Petitioner. (Id. at ¶ 6).

Petitioner submitted documentary evidence on 12/31/2019 with information regarding a pay slip to Yale University. The current net pay at that time was \$607.09, and the year to date earnings were \$35,287.33. (Documentary Evidence). Additionally, Petitioner submitted a credit report on 01/21/2020 showing all accounts were in good standing and her total open balances were \$266,066. Additionally, the evidence revealed a card balance of \$52,537. Petitioner’s collections, student loans, and other loans had a balance of \$0. Lastly, Petitioner’s auto loans balance was \$6,384, and home loads balance was \$207,145. (Pet. Supporting Evidence).

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)(H)). Additionally, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, or that the alleged debt is legally unenforceable. Id.

As evidence of Petitioner’s indebtedness, the Secretary has filed the Secretary’s Statement (Sec’y Stat.) along with the sworn declaration (Exh. A, Sautter Decl.) of Gary Sautter, Director, Asset Recovery Division; and a copy of the Note. Accordingly, the Court finds that the Secretary has met her initial burden of proof.

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 has not entered into a written repayment agreement in response to the Notice. (Id. at ¶ 7). In her request for a hearing, Petitioner checked the box alleging that she does not owe a debt to HUD. However, in Petitioner’s letter dated February 25, 2019, Petitioner states that when she refinanced her primary mortgage, her debt to HUD was shown on the Penny Mac Loan Modification Itemization, but, nevertheless, HUD was not paid off. *See* Petitioner’s Hearing Request at pp. 5-7.

Although Petitioner denies liability on the Note, she admits that she has not repaid the Note, and that she failed to repay the Note when she refinanced her underlying mortgage. *Petitioner’s Statement*, dated December 31, 2019. She further states that the repayment failure

was due to a series of "professional errors" committed by Fidelity National Title Insurance Company and her closing attorney. *Id.* Even accepting this aspect of Petitioner's statement that the title company and closing attorney committed errors, this does not absolve Petitioner of her own liability for the debt as set forth in the Note. In other words, Petitioner is ultimately responsible for its repayment. Sautter Declaration at ¶ 9. Accordingly, I find that Petitioner is indebted to the Department in the amounts claimed by the Secretary.

HUD attempted to obtain a copy of Petitioner's most recent pay statement. As of May 2019, Petitioner had not provided one to HUD. Therefore, HUD's proposed repayment schedule was set to \$1,910.00 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. (Sautter Declaration at ¶ 8). However, in the documentary evidence Petitioner submitted on 12/31/2019, a pay slip with Petitioner's most recent pay statement was received by HUD. (Documentary Evidence).

Pursuant to 31 C.F.R. § 285.11(e)(8)(ii), this Court has the discretion to modify the Secretary's proposed repayment schedule if there is a bona fide showing of financial hardship based on the record and such has not been proven in this case. Petitioner claims that the Secretary's proposed repayment schedule would create an undue financial hardship for her and her family. (See Pet's Response, ¶ 6-8). Petitioner has provided limited information as to her household expenses. Without proof of payment of mortgage, rent, groceries, clothing, medical expenses, utilities, and other necessary household expenses, the Court is unable to make a finding of financial hardship. The Court notes, however, that the provisions of 31 C.F.R. § 285.11(k), permit Petitioner to move for reconsideration of this matter if and when financial circumstances warrant further review.

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 amounts 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**. It is

FURTHER ORDERED that the Secretary is authorized to collect the debt in this case in the amount of 15% of Petitioner's disposable monthly income, or in the maximum amount permitted by law.

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 showing of new evidence that could not have been previously presented. You may also appeal this decision to the appropriate United States District Court. For wage garnishment cases, *See* 24 C.F.R. § 17.81, 31 C.F.R. § 285.11(f), 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.*