

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

In the Matter of:

JABED LATIF,

Petitioner.

19-AM-0184-AG-049

721015331

June 22, 2021

DECISION AND ORDER

On August 11, 2019, Javed Latif (“Petitioner”) filed a Request for Hearing concerning the existence 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 use 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 using 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(b).

BACKGROUND

In or about April 2015, Petitioner’s HUD-insured primary mortgage was in default, and Petitioner was threatened with foreclosure. (Secretary’s Statement (“Sec’y Stat.”), ¶ 2, filed September 16, 2019; Sec’y Stat., Ex. A, Declaration of Brian Dillon¹, ¶ 4). HUD loaned Petitioner the sum of \$79,493.45 to avoid default on his HUD-insured primary mortgage. (Sec’y Stat., ¶ 4; Ex. A, ¶ 4). Petitioner executed and duly delivered a Partial Claims Promissory Note (“Note”), evidencing this loan to HUD. (Sec’y Stat., ¶ 4; Ex. B, Note).

Under the Note’s terms, Petitioner was to pay the principal amount of the unpaid balance until the Note was paid in full. (Sec’y Stat., Ex. B, ¶ 2). 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 the payment in full of his primary mortgage with Wells Fargo. (Sec’y Stat., ¶ 5; Ex. B, ¶ 3(A)(i)).

¹ Brian Dillon is Director of the Asset Recovery Division of HUD’s Financial Operations Center.

On or about January 10, 2019, Petitioner's primary lender notified HUD that Petitioner's primary note was paid in full. (Sec'y Stat., ¶ 6; Ex. A, ¶ 4). This information automatically triggered the termination of the HUD insurance on Petitioner's primary note. (Sec'y Stat., ¶ 6; Ex. A, ¶ 4; Ex. B, ¶ 3(A)(i) & (iii)).

Thereafter, HUD made its demand upon Petitioner to pay the amounts owed, but Petitioner failed to do so. (Sec'y Stat., ¶ 8; Ex. A, ¶ 5). As a result, the Secretary alleges that Petitioner is indebted to HUD in the follow amounts:

- a) \$79,098.45 as the unpaid principal balance as of August 31, 2019;
- b) \$197.67 as the unpaid interest on the principal balance as of August 31, 2019; and
- c) Interest on said principal balance from September 1, 2019 at 1% per annum until paid.

(Sec'y Stat., ¶ 9; Ex. A, ¶ 5).²

On July 26, 2019, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") was sent to Petitioner. (Sec'y Stat., ¶ 10; Ex. A, ¶ 6). Petitioner has not entered into a repayment agreement in response to the Notice. (Sec'y Stat., ¶ 11; Ex. A, ¶ 7).

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, a sworn declaration by Brian Dillon, and a copy of the Note executed by Petitioner. Accordingly, the Court finds that the Secretary has met his initial burden of proof.

In Petitioner's Request for Hearing, Petitioner indicated that the debt was not owed. Specifically, Petitioner stated that he interpreted a letter received from Wells Fargo, dated July 31, 2017, to mean that he no longer owed any monies on the HUD Note. (Petitioner's August Letter, (Pet'r Aug. Ltr.), p. 3). Further, Petitioner alleged that he had received a letter from Wells

² Petitioner states that he has received a letter, dated September 29, 2019, from the U.S. Department of the Treasury. This letter indicated that the debt, in addition to a collection penalty of \$23,591.51, had gone to collection. A stay of referral to the U.S. Department of the Treasury was issued by this Court on August 14, 2019. (See Notice of Docketing, 2). This Court lacks jurisdiction over the U.S. Department of the Treasury and may only determine the validity and enforceability of the debt claimed by the Secretary.

Fargo, dated January 10, 2019, that indicated his loan had been paid in full. (Pet's Aug. Ltr., p. 4).

Petitioner apparently interpreted these communications from Wells Fargo to mean that all monies owed to Wells Fargo and the Secretary were reflected on the Wells Fargo payoff letter dated January 10, 2019. (Petitioner's September Letter, (Pet'r Sept. Ltr.), ¶ 17). Petitioner asserts that Wells Fargo was acting as an agent of HUD, and that he was justified in relying upon the statements of Wells Fargo with respect to the HUD Note. (Pet'r Sept. Ltr., ¶ 8). Petitioner further claims that, because of his reliance on the foregoing communications, HUD should be estopped from collecting the debt from him and Wells Fargo should be responsible for any monies owed under the terms of the Note. (Petitioner's October Letter, (Pet'r Oct. Ltr.), ¶ 16).

The Secretary counters that no agency relationship existed between HUD and Wells Fargo. (Sec'y Stat., ¶ 13). The Secretary states that, as a HUD-insured lender, Wells Fargo was required to act in accordance with HUD's insurance program requirements but was not authorized to service the HUD-insured Note or to issue a mortgage satisfaction extinguishing the indebtedness without HUD's express consent. (Sec'y Stat., ¶ 16).

After consideration, none of Petitioner's arguments have the legal effect of discharging his liability for the subordinate note that he signed. The Court has consistently stated that, "[a] third party's error or negligence does not relieve Petitioners of liability for the debt...Petitioners' obligation to pay the debt derives from the Note's terms." Stephond West, HUDOA No. 17-AM-0026-AG-006 (March 14, 2018), citing Bryan McClees, HUDOA No. 17-AM-0037-AO-010 (February 14, 2018) and Cydney A. Taylor, HUDOA No. 14-AM-0063-AO-005 (October 22, 2014). The express terms of the Note indicate that it would need to be paid in full at any time an event in ¶ 3 occurred, and Petitioner was aware of these terms. (Sec'y Stat., Ex. B, ¶ 3; Pet'r Aug. Ltr., p. 3). Thus, even if Wells Fargo mistakenly told Petitioner that the Note had been paid off, this would not relieve Petitioner of liability.

Moreover, Petitioner has failed to offer sufficient evidence in support of his argument that Wells Fargo acted as an agent of HUD. In order to establish an agency relationship under New Jersey law, Petitioner must show either that the principal delegated actual authority to the agent to act under its control and on its behalf, or that the principal's conduct created a reasonable appearance of the agent's authority. See Sears Mortgage Corp. v. Rose, 134 N.J. 326, 337-38 (1992). The relationship between HUD and FHA-insured lenders, such as Wells Fargo, is clearly established as a regulatory relationship. See 24 C.F.R. § 203 et seq.

Furthermore, the conduct of a putative agent is insufficient to establish that a principal created the appearance of authority. See AMB Property, LP v. Penn America Ins. Co., 14 A.3d 65, 72-73 (N.J. Sup. Ct., App. Div. 2011). Petitioner has not offered any facts to suggest that HUD's conduct created a reasonable appearance that Wells Fargo had the ability to discharge the debt owed to HUD. Petitioner instead argues that the conduct of Wells Fargo resulted in his mistaken presumption that the HUD Note was discharged. Therefore, Petitioner has failed to establish an agency relationship between HUD and Wells Fargo. An FHA-insured lender, such as Wells Fargo, has no authority to waive repayment of a HUD Note, and the conduct of Wells Fargo bears no relationship to the obligations of Petitioner under the terms of the Note.

Petitioner's failure to establish an agency relationship between HUD and Wells Fargo also extinguishes his argument of estoppel. Because Wells Fargo had no authority to waive repayment of the Note, and Petitioner has not demonstrated any action on the part of HUD that would support a finding of apparent authority, Petitioner's claims of agency liability and estoppel are undermined. Additionally, even if Petitioner's reliance was reasonable, his argument fails to meet the heightened standards necessary to support an estoppel claim against the Government. See OPM v. Richmond, 496 U.S. 414, 419-24 (1990) (explaining that equitable estoppel generally cannot be found against the Government but leaving open the possibility that the Government's affirmative misconduct might support such a claim); Heckler v. Cmty. Health Servs., Inc., 467 U.S. 51, 59 (1984) (stating that it is "well settled that the Government may not be estopped on the same terms" as a private party).

Although Petitioner paid his Wells Fargo mortgage off in full, the Note with HUD is separate and apart from his indebtedness to Wells Fargo. (Sec'y Stat., ¶ 16). The Court has been clear that the obligation to repay derives from the Note's terms. See Dimitris and Andrea Baldwin, HUDOA No. 12-AMCH-AO47 (April 8, 2013). Petitioner was, by his own admission, on notice of the terms of the Note and subsequently failed to fulfill his obligations under them. (Pet'r Aug. Ltr., p. 3; Sec'y Stat., ¶ 8). For Petitioner not to be held liable for the subject debt, he must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release him from his legal obligation. See Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005). Petitioner has failed to present evidence of either of these releasing conditions. Therefore, the Court finds that the debt to the Secretary is past due and legally enforceable.

ORDER

For the reasons set forth above, 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 hereby **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 compelling legal argument or 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.