

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

In the Matter of:

Melvin J. Chavarria,

Petitioner.

19-VH-0132-AG-032

7-210138600A

November 13, 2020

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* ("*Hearing Request*") filed by Tracy Collins ("Petitioner,") on June 4, 2019 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 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 pursuant to 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81, and the Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720A). 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 June 7, 2019, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. *Notice of Docketing, Order and Stay of Referral* ("*Notice of Docketing*") at 2. On June 28, 2019, the Secretary filed his *Statement* along with documentation in support of his position. On October 15, 2019, Petitioner filed documentary evidence in support of his position that the debt is not enforceable at the amount so claimed by the Secretary. 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 3720A, because of a defaulted loan that was insured against non-payment by the Secretary.

The Secretary claims that Petitioner's debt is past due and legally enforceable and thus seeks authorization of his proposed repayment schedule for Petitioner. In support of his position, the Secretary produced a copy of the Note signed by Petitioner, along with a copy of a sworn declaration from the Director of HUD's Asset Recovery Division in which the Director substantiates the debt amount owed by Petitioner. *See Secretary's Statement ("Sec'y. Stat.")*, filed September 11, 2017, Ex. 1, ¶ 2, *Declaration of Brian Dillon (Dillon Decl.)*,¹ ¶ 5.

On or about July 26, 2010, Petitioner obtained a HUD-insured mortgage loan. *Sec'y. Stat.*, Ex. 1, *Dillon Decl.*, ¶ 4; Ex. 2, Note. In order to protect Petitioner from foreclosure and bring his delinquent mortgage arrears current, HUD approved a partial claim pursuant to the Home Affordable Modification Program ("HAMP") to prevent the lender from foreclosing. *Sec'y Stat.* ¶ 3, Ex. 1, *Dillon Decl.* ¶ 4.

As a means of providing foreclosure relief, on June 27, 2014, Petitioner executed a Partial Claims Promissory Note ("Note") in the amount of \$10,917.30 in favor of the Secretary. *Sec'y Stat.*, Ex. B, Note. Paragraph 3(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. *Id.* at ¶ 3(A)(i)(iii). On or about May 4, 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. *Sec'y Stat.* ¶ 6, Ex. 1, *Dillon Decl.* ¶ 4; Ex. 2, Note at ¶ 3(A)(i) & (iii).

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "U.S. Department of HUD, C/O DEVAL LLC, Westpoint 1 – 1255 Corporate Drive, Suite 300, Irving, TX 75038 ... or any such other place as [HUD] may designate in writing by notice to Borrower." *Sec'y Stat.*, Ex. 2, Note at ¶ 3(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. *Sec'y Stat.* ¶ 3, Ex. 1, *Dillon Decl.* ¶ 5.

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:

- (a) \$10,917.30 as the unpaid principal balance as of May 30, 2019;
- (b) \$81.81 as the unpaid interest on the principal balance at 1% per annum through May 30, 2019;
- (c) \$692.55 as the unpaid penalties and administrative costs as of May 30, 2019; and,

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

(d) Interest on said principal balance from June 1, 2019 at 1% per annum until paid.

Sec'y Stat. ¶ 9, Ex. 1, *Dillon Decl.* ¶ 5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated July 27, 2017 ("Notice") was sent to Petitioner. *Sec'y Stat.* ¶ 10, Ex. 1, *Dillon Decl.* ¶ 5.

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. *Sec'y Stat.* ¶ 11, Ex. A, *Dillon Decl.* ¶ 7.

HUD attempted to obtain a copy of Petitioner's most recent pay statement for calculating a proposed repayment plan based on Petitioner's actual income. To date, however, Petitioner has not provided to HUD a copy of her pay statement. Therefore, HUD's proposed repayment schedule is \$325.00 per month, which will liquidate the debt in three years as recommended by the Federal Claims Collection, or 15% of Petitioner's disposable pay. *Sec'y Stat.* ¶ 13, Ex. 1, *Dillon Decl.* ¶ 8.

DISCUSSION

Petitioner claims that he does not owe the debt so claimed by the Secretary because he was not under a contractual obligation to pay the same. More specifically, Petitioner states, "I am requesting validation, made pursuant to the Fair Debt Collection Practices Act and the Fair Credit Reporting Act, along with the corresponding local state laws. Please note that I am requesting "validation"; that is competent evidence bearing my signature, showing that I have (or ever had) some contractual obligation to pay you." See Petitioner's Request for Hearing (Hearing Request) filed June 4, 2019.

In response, the Court issued a *Notice of Docketing* to Petitioner, on June 7, 2019, in which Petitioner was informed that, "**Documents relating to this alleged debt are not in the possession of this Court.** Petitioner may request copies of these documents by writing to: Cheryl Dobert, U.S. Department of Housing and Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY 12203." Further, Petitioner was issued a response directly from HUD in response to his concerns regarding the origin of this contractual obligation. See HUD's Response to Petitioner's Letter dated May 29, 2019.² *Sec'y. Stat.*, Ex. 1, *Dillon Decl.*, Ex. A, Letter to Petitioner dated May 29, 2019. To date, sufficient evidence does not exist in the record that Petitioner either requested documents relating to the subject debt or subsequently provided documentary evidence that supports rendering the subject debt unenforceable.

Petitioner later introduced into evidence a copy of a *Satisfaction of Mortgage* from Wells Fargo Home Mortgage dated May 11, 2018 that proved that the primary mortgage was satisfied

² On May 29, 2019, HUD's Financial Operations Center sent Petitioner a letter detailing the origin and terms of the Note and explaining the process through which HUD would enforce this debt.

but fell short of meeting the burden of proof that the Partial Claims Promissory Note was likewise paid in full. This Court has previously held that “[i]f satisfaction of a senior deed of trust prevents a junior trust holder from enforcing a junior trust deed on the same real property, the junior trust holder may collect the debt, now unsecured, by initiating collection efforts based on the obligations in the loan note.” Mitchell and Rosalva Fraijo, HUDBCA No. 99-C-CH-Y200 at 3 (March 20, 2000); see also John Bilotta, HUDBCA No. 99-A-CH-Y258 (December 29, 1999) (citing Kimberly S. (King) Thede, HUDBCA No. 89-4587-L74 (April 23, 1990)). Since the Secretary’s right to collect the subject debt emanates from the terms of the Partial Claims Promissory Note and not from the terms of payoff from the primary lender, the Court finds that the Secretary is entitled to separately enforce the debt against Petitioner under the assigned Note. See Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007).

For Petitioner to prevail in this case, he must produce sufficient evidence of either (1) a written release from HUD specifically discharging Petitioner’s obligation for payment of the alleged debt; or (2) evidence of valid or valuable consideration paid to HUD that released Petitioner from his obligation or that was accepted by the lender with the intent to release Petitioner from his legal obligation. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); see also William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518-H51 (January 27, 1988); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986).

As mentioned earlier, Petitioner’s introduction of a *Satisfaction of Mortgage* for the primary lender (Wells Fargo) does not, alone, prove that Petitioner was discharged from the subject debt in this case. The Court must rely on the weight of evidence presented by Petitioner in the record, and such sufficient evidence is sorely lacking in the record of this proceeding. In this case, the Partial Claims Promissory Note must be treated as a separate and distinct contract from the primary mortgage. The language in that Note indicates, in unambiguous terms, that the subject debt becomes due when Petitioner pays “in full all amounts due under the primary Note.” *Sec’y. Stat.*, Ex. 2 ¶ 3(A)(i). On May 4, 2018, Petitioner’s primary mortgage was terminated when the primary lender notified the Secretary that such primary note was paid in full. *Sec’y. Stat.* ¶ 6, Ex. 1, *Dillon Decl.*, ¶ 4; Ex. 2, Note, ¶ 3(A)(i) & (iii). This event triggered the timeline for the Partial Claims Promissory Note to become due. As such, Petitioner’s contractual obligation to pay on the Note remained intact.

Without sufficient evidence to either refute or rebut what the Secretary has presented as the amount owed, the Court is again unable to determine the credibility of Petitioner’s claim that the amount presented by the Secretary is unenforceable. This Court has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). The Court shall continue to maintain such standard in the instant case.


ORDER

Based on the foregoing, the Court finds that the subject debt is past due and enforceable in the amount alleged by the Secretary.

The Order imposing the stay of referral of this matter on June 7, 2019 to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at the proposed repayment schedule of \$325.00 per month, or 15% of Petitioner's disposable income.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of the Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of

the date of the written decision, and shall be granted only upon a showing of good cause.