

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS  
Washington, D.C.

In the Matter of

HUDOA No: 20-AM-0050-AG-029

HUD Claim No.: 721012723

Lara Haugen a/k/a Lara C. Carlin Haugen,

Petitioner.

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**DECISION AND ORDER**

On December 16, 2019, (“Petitioner”) filed a Request for Hearing concerning the amount, enforceability, or payment schedule of a debt allegedly 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 garnishments as a mechanism for the collection of debts allegedly 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 by means of 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.

**BACKGROUND**

On or about May 26, 2015, Chad Haugen and Lara Haugen ("Petitioner") executed and delivered to the Secretary a *Subordinate Note* (the "Note"), in the amount of \$75,295.22. *See Secretary's Statement* (“Sec’y. Stat.”), Exhibit 1. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA-insured mortgage lender, Nationstar Mortgage, LLC. The proceeds of the Note were applied to Petitioner’s primary mortgage with Nationstar Mortgage, LLC, to prevent foreclosure on Petitioner’s home, and the Note was made payable to the Secretary of the U.S. Department of Housing and Urban Development. *See Sec’y. Stat.*, Exhibit 2, *Declaration of Gary Sautter*, Acting Director of the Asset Recovery Division of HUD's Financial Operations Center, (“*Sautter Decl.*”) ¶ 4.

Under the terms of the Note, the amount to be repaid thereunder becomes due and payable "[o]n June 1, 2045 or, if earlier, when the first of the following events occurs: (i)

borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary; or (ii) the maturity date of the primary note has been accelerated; or (iii) the primary note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary; or (iv) the property is not occupied by the purchaser as his or her principal residence." Note, ¶ 4(A).

On or about August 8, 2017, the Petitioner's first mortgage was paid in full and the FHA mortgage insurance was terminated, an event that caused the Note to become due and payable. *Sautter Decl.*, ¶ 14; Note, ¶ 4. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sautter Decl.*, ¶ 5. A Notice of Intent to Initiate Administrative Wage Garnishment Proceeding, dated November 7, 2019, was mailed to Petitioner's last-known address. *Sautter Decl.*, ¶ 6.

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, which could have avoided issuance of a wage garnishment order to Petitioner's employer. However, to date, the Secretary alleges that Petitioner has not entered into any such agreement. *Sautter Decl.*, ¶ 7.

The Secretary alleges that Petitioner is indebted to the Secretary in the following amounts:

- a. \$75,295.22 as the unpaid principal balance as of November 30, 2019;
- b. \$1,379.84 as the unpaid interest on the principal balance at 1.0% per annum through November 30, 2019;
- c. \$8,629.92 as the unpaid penalties and administrative costs through November 30, 2019; and
- d. interest on said principal balance from December 1, 2019, at 1.0% per annum until paid. Exhibit 2, 15.

*Sautter Decl.*, ¶ 5.

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 an 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*, together with an accompanying sworn declaration by Gary Sautter, Director, Asset Recovery Division, HUD Financial Operations Center, *Sec'y Stat.*, Ex. 2; and copies of the Note, and accompanying notices and documents. (See *Sec'y Stat.*, Ex. 1). The Court

finds the Director's diligence in analyzing Petitioner's claim, and the Director's explanation of that review to be sufficient to prove that Petitioner is indebted to the Department in the amounts claimed by the Secretary. Accordingly, the Court finds that the Secretary has met the Secretary's initial burden of proof.

Petitioner seeks to establish that the alleged debt in this case is not owed, not properly calculated, or is not legally enforceable. Petitioner has filed the *Hearing Request*, dated December 16, 2019, as proof that the debt is not owed. Petitioner has not brought forth any evidence to show that the amounts claimed by the Secretary were incorrectly calculated. 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 enforceable.” (See *Michael R. Bridges*, HUDOHA No. 13-AM-0125-AG-054 (August 13, 2013); *Eric and Eliza Rodriguez*, HUDOHA No. 13-AM-0061-AG-023 (April 17, 2013)(citing *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005); *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

In *Petitioner's Hearing Request*, Petitioner has attached correspondence that Petitioner exchanged with HUD and Petitioner's title company, First American Title Insurance Company in and around November 20, 2019. The gravamen of Petitioner's claim is that she does not owe the alleged debt to HUD because she paid the sum of \$76,081.97 to her primary mortgage lender, Nationstar Mortgage, LLC when she closed on her property on or about May 1, 2017.

According to Petitioner, she had understood at closing, that those funds were earmarked for payment from Nationstar to HUD in order to pay off the Note at issue in this case. The closing settlement sheet designates this seller debit as “Lender Paid Expenses to Nationstar Mortgage, LLC.” It is somewhat mysterious that this \$76,081.97 payment is similar to the \$75,295.22 amount of the Note, but this could be entirely coincidental, and Petitioner provides no other documentary evidence to demonstrate that any of the closing funds ever reached the Secretary of Housing and Urban Development as designated and required by the Note.

Petitioner insists that her debt to HUD, under the Note, was paid to Nationstar. But she provides no documentary evidence that HUD ever authorized her or Nationstar to have Nationstar accept payment for the Note on HUD's behalf. Instead, she states that HUD “need[s] to pursue Nationstar Mortgage as they are the ones holding the monies owed to HUD.” *Petitioner's Hearing Request*, attaching Haugen correspondence to the U.S. Department of the Treasury, dated November 20, 2019. The Secretary states that HUD is under no obligation to determine the validity of Petitioner's claim against Nationstar, or to pursue Nationstar on Petitioner's behalf. *Secretary's Supplement Statement*, ¶5. Indeed, HUD is entitled to payment in its own right, and under the express terms of the Note.

Petitioner has provided no documentation to demonstrate that HUD's Note was repaid in full upon the sale of her home or at any other time thereafter. Petitioner has also not provided any evidence to prove that she was released by HUD from her obligation to repay the debt owed pursuant to the Note. *Sautter Decl.*, ¶ 9-10. The real estate sale closing settlement statement provided by Petitioner demonstrates only that Petitioner's primary mortgagee was paid, and includes no indication that HUD's Note was paid as a result of that transaction. *Id.*

Petitioner has the burden of producing evidence which demonstrates that the claimed debt is not past-due or legally enforceable. See Michael Cook, HUDBCA No. 87- 2782-H307 (Aug. 11, 1988). "Assertions without evidence are not sufficient to show that a debt claimed by the Secretary is not past due or unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009); 31 C.F.R. 285.11(f)(8)(ii); Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009); Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). This Court has held that the Secretary's right to collect the debt claimed emanates from the terms of the Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007).

In order to extinguish the debt, there must be a release, in writing, from the lender—in this case HUD—specifically discharging Petitioner's obligation, for valuable consideration accepted by the lender from Petitioner, which would indicate intent to release. Franklin Harper, HUDBCA No. 04-D-CH-AWG41 (March 23, 2005); Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); Cecil F. & Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); Jesus E. & Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986). Petitioner has not provided any evidence of a valid release from her obligation by HUD.

The evidence clearly shows that Petitioner executed the Note, and did not repay it. If she mistakenly paid Nationstar instead of HUD, that circumstance has no impact on the enforceability of her debt to HUD under the Note. Accordingly, the Court finds that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

Petitioner has filed no documentary evidence to prove that undue financial hardship would be created by imposition of a repayment schedule. The Court therefore authorizes repayment at the amount of 15% of Petitioner's disposable pay, or the maximum amount authorized by law. This Court has authority to mitigate payments in determining whether financial hardship would be imposed in particular cases, but the Court does not have the authority to establish "a debtor's repayment amount or a schedule of payments." As such, 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. If Petitioner wishes to discuss a payment plan, Petitioner may discuss the matter with Michael DeMarco the Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859 or write to HUD Financial Operation Center, 50 Corporate Circle, Albany, NY 12203-5121. Petitioner is also entitled to seek reassessment of

this financial hardship determination in the future in the event that he experiences materially-changed financial circumstances. *See* 31 C.F.R. §285.11(k).

### **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 seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15% of Petitioner's disposable pay for each pay period.

**SO ORDERED,**



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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 demonstration by the movant that there is substantial new evidence to be presented that could not have been presented previously. An appeal may also be taken of this decision to the appropriate United States District Court. For wage garnishments cases, *See* 24 C.F.R. § 17.81, 31 C.F.R. § 285.119f, 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.