

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

In the Matter of:

Misha Bagley ,

Petitioner

20-VH-0276-AG-174

721016262

November 17, 2021

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hearing Request*”) filed on August 31, 2020 by Petitioner Misha Bagley (“Petitioner”) concerning the existence and 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. This court hearing is conducted in accordance with the procedures set forth in 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. 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).

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f)(4), on August 31, 2021, this Court stayed the issuance of an administrative wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”) at 2. On November 2, 2020, the Secretary filed a *Secretary's Statement* (“*Sec'y. Stat.*”), along with documentary evidence, in support of her position. On May 25, 2021, Petitioner filed her *Statement* and documentary evidence in support of her position. 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.

On or about November 27, 2018, Misha R. Bagley (“Petitioner”) executed and delivered to the Secretary a *Promissory Note* (the “Note”), dated October 3, 2018, in the amount of \$16,096.00. *Sec’y. Stat. ¶ 4, Ex. 2, Declaration of Brian Dillon¹ (“Dillon Decl.”) ¶ 4.*

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner’s FHA-insured primary mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec’y. Stat. ¶ 3, Ex. 1, Note; Ex. 2, Dillon Decl. ¶ 4.*

By terms of the Subordinate Note, the amount to be repaid thereunder becomes due and payable “[o]n November 1, 2048 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 note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary.” *Sec’y. Stat. ¶ 4, Ex. 1, Note, ¶ 4(A).*

On or about July 22, 2019, the Petitioner’s primary mortgage was paid in full, and the FHA mortgage insurance was terminated, an event that caused the Note to become due. *Sec’y. Stat. ¶ 5, Ex. 1, Note, ¶ 4; Ex. 2, Dillon Decl. ¶ 4.* Accordingly, HUD has attempted to collect the amounts due under the Note, but Petitioner remains indebted to HUD. *Sec’y. Stat. ¶ 5, Ex. 2, Dillon Decl. ¶¶ 5-6.*

A Notice of Intent to Initiate Administrative Wage Garnishment Proceeding, dated July 29, 2020, was mailed to Petitioner’s last-known address. *Sec’y. Stat. ¶ 6, Ex. 2, Dillon 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, Petitioner has not entered into any such agreement. *Sec’y. Stat. ¶ 7, Ex. 2, Dillon Decl. ¶ 7.*

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

- a. \$15,391.21 as the unpaid principal balance as of August 31, 2020;
- b. \$38.58 as the unpaid interest on the principal balance at 1.0% per annum through August 31, 2020;
- c. \$0.00 as the unpaid penalties and administrative costs through August 31, 2020; and
- d. interest on said principal balance from September 1, 2020, at 1.0% per annum until paid.

Sec’y. Stat. ¶ 8, Ex. 2, Dillon Decl. ¶ 6.

Based upon a review of Petitioner’s income documentation as of August 29, 2020, HUD proposes a garnishment repayment schedule in the amount of \$225.36 bi-weekly, or an amount equal to 15% of Petitioner’s disposable income. *Sec’y. Stat. ¶ 11, Ex. 2, Dillon Decl. ¶ 8.*

¹ Brian Dillon is the Director of Asset Recovery Division for the U.S. Housing and Urban Development.

DISCUSSION

Petitioner contends that she is not responsible for the subject debt because the debt was paid in full at settlement. *Petitioner's Hearing Request*, at 1. As support, Petitioner introduced into evidence copies of a *Settlement Statement* and a *Tax Proration Agreement* in support of her position. *Petitioner's Documentary Evidence*, at 1.

For Petitioner not to be held liable for the full amount of the subject debt, there must be either a release in writing from HUD explicitly relieving Petitioner's obligation, or "valuable consideration accepted by HUD" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). After reviewing the record of the proceeding, the Court has determined that Petitioner has failed to meet her burden of proof because Petitioner has not offered any proof that HUD explicitly released Petitioner from her contractual obligations. The Secretary's right to collect the alleged debt stems from the terms of the Note, not from the terms of payoff statements or settlement statements from the primary lender. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). As a result, the Court has determined that neither the *Settlement Statement* nor the *Tax Proration Agreement* presented by Petitioner serves as credible or sufficient proof that the subject debt is unenforceable.

This Court has consistently maintained that "assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due and unenforceable." Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, in the absence of sufficient evidence, the Court must find that Petitioner has failed to meet her burden of proof and thus remains contractually obligated to pay the subject debt so claimed by the Secretary.

ORDER

Based on the foregoing, the Order imposing the stay of referral on August 31, 2020 of this matter to the U.S. Department of Treasury for an 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 of \$225.36 bi-weekly, or an amount equal to 15% of Petitioner's disposable income.

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