

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

In the Matter of:

Tashia Mayo,

Petitioner

21-VH-0012-AG-008

721015815

February 11, 2022

DECISION AND ORDER

This proceeding is before the Court upon a *Request for Hearing (Hearing Request)* filed on October 22, 2020, by Petitioner Tashia Mayo (“Petitioner”) 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”). This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations.

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 hearing is conducted in accordance with the procedures set forth at 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). 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 October 28, 2020, this Court stayed the issuance of a wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”) at 2. On December 22, 2020, the Secretary filed his *Statement (Sec’y. Stat.)* along with documentation in support of her position. In response to the *Secretary’s Statement*, Petitioner filed a written *Statement* along with documentary evidence in support of her position on May 6, 2021. This case is now ripe for review.

FINDINGS OF FACT

This debt resulted from a defaulted loan which was insured against non-payment by the Secretary, from an overpayment by HUD, from delinquent rent payments due to HUD, or due to other reasons.

On or about July 2013, the HUD-insured mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Secretary's Statement (Sec 'y. Stat.)* ¶ 2, Ex. A, *Declaration of Gary Sautter*¹ ("*Sautter Decl.*") ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Sec 'y. Stat.* ¶ 3, Ex. A, *Sautter Decl.* ¶ 4.

In exchange for foreclosure relief, on August 18, 2013, Petitioner executed a Subordinate Note ("Note") in the amount of \$31,869.64 in favor of the Secretary. *Sec 'y. Stat.* ¶ 4, Ex. B, Note, Ex. A, *Sautter Decl.* ¶ 4. 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. *Sec 'y. Stat.* ¶ 5, Ex. B, Note at ¶ 4(A)(i); Ex. A, *Sautter Decl.* ¶ 4. On or about May 28, 2019, 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. B, Note at ¶¶ 4(A)(i) & (iii)), Ex. A, *Sautter Decl.* ¶ 4.

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 Lender may designate in writing by notice to Borrower." *Sec 'y. Stat.* ¶ 7, Ex. A, *Sautter Decl.*; Ex. B, ¶ 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. *Sec 'y. Stat.* ¶ 7, Ex. A, *Sautter Decl.* at ¶ 6; Ex. B, Note ¶ 4(B)).

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 as of November 30, 2020:

- (a) \$29,812.13 as the unpaid principal balance;
- (b) \$171.19 as the unpaid interest on the principal balance at 1% per annum; and
- (c) interest on said principal balance from December 1, 2020 at 1% per annum until paid.

Sec 'y. Stat. ¶ 8, Ex. A, *Sautter Decl.* ¶6.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated October 8, 2020 was sent to Petitioner. *Sec 'y Stat.* at ¶ 10, Ex. A, *Sautter Decl.* ¶6.

¹ Gary Sautter is Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

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. *Sautter Decl.* at ¶ 8.

Petitioner also presented a copy of a Debt Resolution Program Repayment Agreement dated January 17, 2020 in which Petitioner and Petitioner's former spouse, Phillip Mayo, voluntarily agreed to repay HUD the subject debt but Petitioner and Phillip Mayo defaulted on the agreement after making only one payment of \$950.00 on February 28, 2020. *Sec'y Stat.* at ¶ 16, Ex. A, *Sautter Decl.* ¶5.

HUD reviewed Petitioner's biweekly pay statement for the period ending December 5, 2020. The pay statement reveals that Petitioner's biweekly gross salary is \$2,117.36. Less allowable deductions of \$412.00, Petitioner's biweekly net disposable pay equals \$1,705.36. Administrative Wage Garnishment of 15% of Petitioner's disposable pay equals \$490.46 biweekly. Therefore, the Secretary's proposes a repayment schedule of \$255.80 biweekly, or 15% of Petitioner's disposable pay. *Sec'y Stat.* at ¶ 17, Ex. A, *Sautter Decl.* ¶9.

DISCUSSION

Petitioner does not dispute the amount of the debt. Instead, Petitioner challenges the existence of the debt because she alleges the subject debt is the responsibility of her ex-spouse pursuant to the terms of a divorce decree. Along with her *Hearing Request*, Petitioner introduced into evidence copies of a *Quitclaim Deed* dated October 9, 2012, a previous debt resolution repayment agreement with HUD, a rental agreement that reflected Petitioner's increased monthly rental, and a *Judgement for Absolute Divorce (Divorce Decree)* issued by the State of North Carolina District Court Division, Durham County. *Hearing Request*, Attachments.

After reviewing Petitioner's documentary evidence, the Court has determined that the evidence offered by Petitioner fails to meet the burden of proof that the subject debt is unenforceable against her. For Petitioner not to be held liable for the full amount of the debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation to HUD, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Petitioner offered into evidence a copy of a *Judgement for Absolute Divorce Decree* in which her former spouse, Phillip Mayo, was adjudged by transfer of deed as owner of the property that Petitioner alleges is associated with the subject debt. *Hearing Request*, Attached *Divorce Decree*, at 4.

Based on case law precedent, the debtor, herein Petitioner, is jointly and severally liable with the former spouse for repayment of the debt according to the terms of the *Note*. As a result, the Secretary may proceed against any co-signer, either Petitioner or her spouse in this case, for the full amount of the debt. Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003). The *Divorce Decree* relied upon only determines the rights and liabilities between Petitioner and her former spouse, not the rights and liabilities between Petitioner and third parties such as HUD. Kimberly S. Kim. (Thiedel), HUDBCA No. 89-4587-L74 (April 23, 1990). Any reference to a document (i.e. *Divorce Decree*) purporting to release a debtor from a joint obligation does not affect the claims of an existing third-party creditor against that debtor unless the creditor was a party to the action. Janet T. Rodocker, HUDBCA No. 00-A-CH-AA17 (May 22, 2000).


While Petitioner may be divorced from her former spouse, neither the Secretary nor the lender was a party to that divorce proceeding and thus the terms of the *Divorce Decree* have no impact on the enforceability of the subject debt. As a recourse, Petitioner may consider seeking, in the state or local court, enforcement of the *Divorce Decree* that was granted to her and her former spouse so that Petitioner may recover from her former spouse monies paid to HUD in satisfaction of the subject debt. See William Holland, HUDBCA No. 00-A-NY-AA83, dated Oct. 12, 2000; Michael York, HUDBCA No. 09-1-1-CH-AWG36 dated June 26, 2009, at 3. That course of action obviously would be a separate and distinct proceeding from this one and is within Petitioner's sole discretion to pursue. But in this case, without additional proof to substantiate Petitioner's receipt of a written release directly from HUD, Petitioner shall remain contractually obligated to pay the subject debt as a co-signor on the *Note*.

As a final point, Petitioner requested of the Court to also adjust her previous monthly repayment amount to HUD because Petitioner has since received an increase in her monthly rent. The Court notes from the record that Petitioner defaulted on the previous repayment agreement which in turn resulted in the debt currently due. However, Petitioner's wish to readjust or renegotiate the terms of the previous repayment agreement is not a determination to be made by this Court because this Court is not authorized to extend, recommend, adjust, or accept any repayment plan or settlement offer on behalf of the Department. Petitioner may wish to discuss this matter with Counsel for the Secretary, or with the Director of HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner may also request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

Based on the foregoing, the Order imposing the stay of referral on October 28, 2020 of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment of \$255.80 bi-weekly, or an amount equal to 15% of Petitioner's monthly 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.