

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

In the Matter of:

**Linda Goldsmith,**

Petitioner

21-VH-0026-AG-020

721016578

February 11, 2022

**DECISION AND ORDER**

This proceeding is before the Court upon a *Request for Hearing (Hearing Request)* filed on November 10, 2020, by Linda Goldsmith (“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 November 12, 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 January 11, 2021, 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 April 5, 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 March 2014, 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 Larry Gagliardi*<sup>1</sup> ("*Gagliardi 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, *Gagliardi Decl.* ¶ 4.

In exchange for foreclosure relief, on March 25, 2014, Petitioner executed a Partial Claims Promissory Note ("Note") in the amount of \$28,841.81 in favor of the Secretary. *Sec 'y. Stat.* ¶ 4, Ex. B, Note, Ex. A, *Gagliardi Decl.* ¶ 4. 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. *Sec 'y. Stat.* ¶ 5, Ex. B, Note at ¶ 3(A)(i); Ex. A, *Gagliardi Decl.* ¶ 4. On or about September 23, 2019, the FHA mortgage 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 ¶¶ 3(A)(iii)), Ex. A, *Gagliardi Decl.* ¶ 4.

Upon payment in full or termination of FHA insurance on 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, Suite 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.* ¶ 7, Ex. A, *Gagliardi Decl.*; Ex. B, ¶ 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.* ¶ 7, Ex. A, *Gagliardi Decl.* at ¶ 6; Ex. B, Note ¶ 3(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) \$ 28,841.81 as the unpaid principal balance;
- (b) \$ 480.80 as the unpaid interest on the principal balance at 1% per annum;
- (c) \$1,794.33 as the unpaid penalties and administrative costs on the balance; and
- (d) interest on said principal balance from November 1, 2020 at 2% per annum until paid.

*Sec 'y. Stat.* ¶ 9, Ex. A, *Gagliardi Decl.* ¶5.

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<sup>1</sup> Larry Gagliardi is Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated September 24, 2020 was sent to Petitioner. *Sec'y Stat.* at ¶ 10, Ex. A, *Gagliardi 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 under mutually agreeable terms. Petitioner has not entered into a written repayment agreement in response to the Notice. *Sec'y Stat.* at ¶ 10, Ex. A, *Gagliardi Decl.* at ¶ 7.

HUD attempted to obtain a current pay statement from Petitioner. However, to date, Petitioner has not provided the requested information to HUD. Accordingly, HUD's proposed repayment schedule is \$864.36 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collections Standards, or 15% of Petitioner's disposable pay. *Sec'y Stat.* at ¶ 14, Ex. A, *Gagliardi Decl.* ¶8.

### **DISCUSSION**

Petitioner does not dispute that she owes a debt to HUD but instead disputes that the amount of the debt alleged should not include administrative fees that are excessive. *Hearing Request*, Attachments. As support, Petitioner submitted copies of her Partial Claims Promissory Note and communications from Pioneer Credit Recovery dated September 24, 2020, along with her *Hearing Request* and *Statement*.

After reviewing Petitioner's documentary evidence, the Court has determined that the record of evidence offered by Petitioner has failed to meet her burden of proof that the administrative costs associated with the subject debt are excessive and thus unenforceable. The Secretary correctly acknowledges that HUD is required by statute and regulation to charge interest and fees on past due debts. 1900.25 REV-5 § 2-5 (B). The Debt Collection Improvement Act of 1996 requires HUD to refer delinquent debts to the U.S. Department of the Treasury ("Treasury") for collection. 31 U.S.C. § 3711(g). When HUD sends a debt to Treasury, Treasury is authorized to charge HUD a fee for its collection efforts. 31 U.S.C. § 3711(g)(6). Such fees are then incurred by the debtor as the debtor's responsibility until such time as the debt is paid in full. Moreover, HUD is required to charge the debtor interest, administrative costs, and penalties. 31 U.S.C. § 3717(a) & (e)(1)-(2). Fees and administrative costs (which includes the fee charged by Treasury) total 30% of any amount collected by Treasury. Payments made by the debtor are first applied to fees, then to interest, and then finally to the principal. 31 C.F.R. § 901.9(f).

So, based on the statute and regulations in place, the key to limiting administrative fees to a minimum or avoiding such fees completely is to pay in full the debt owed in a timely manner, otherwise administrative fees and such other costs will increase and ultimately be incurred by the debtor, in this case Petitioner.

While Petitioner alleges that her "average monthly gross wages are less than \$4,700.00 per month, and her net wages are less than \$3,600.00 per month," the record does not reflect any evidence in support of this claim. Without such evidence the Court was unable to assess, particularly at this stage, the credibility of Petitioner's claim. As a result, Petitioner has failed to provide a sufficient legal basis to persuade the Court to waive the interest and fees that have


accrued to date on the alleged debt. Petitioner also failed to demonstrate, by a preponderance of the evidence, that the interest and fees accrued are in fact not authorized in this case. As such, this claim is without merit and the debt alleged remains the obligation of Petitioner.

As a final point, Petitioner requests “A repayment schedule of 10 years if [sic] more feasible and equitable. This repayment would result in a payment of less than \$300.00 per month.” Any alternative repayment plan offered by Petitioner is beyond the scope of the Court’s jurisdiction. This Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may wish to renegotiate repayment terms with the Department or to discuss this matter with Counsel for the Secretary or 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. See Marites Lara, HUDOA No. 19-AH-0191-AG-052 (October 22, 2020). Petitioner may also consider requesting a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142). Otherwise, the Court finds that Petitioner remains contractually obligated to pay the debt so claimed by the Secretary.

### **ORDER**

Based on the foregoing, the Order imposing the stay of referral of this matter on November 12, 2020 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 at an amount equal to 15% of Petitioner’s monthly disposable income.

SO ORDERED.  
  
Vanessa L. Hall  
Administrative Judge

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**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.