

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

In the Matter of:

Yadira Chavez,

Petitioner

21-VH-0035-AG-026

721009676

February 14, 2022

DECISION AND ORDER

This proceeding is before the Court upon a *Request for Hearing (Hearing Request)* filed on November 4, 2020, by Yadira Chavez (“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 December 16, 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 February 8, 2021, the Secretary filed his *Statement (Sec’y. Stat.)* along with documentation in support of her position. In response to the *Sec’y. Stat.*, Petitioner filed a written *Statement* along with documentary evidence in support of her position on July 2, 2021. 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 April 8, 2012, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note") in the principal amount of \$11,277.04. *Sec'y. Stat.*, Ex. 1, Note.

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat. (Sec'y. Stat.)*, ¶ 2, Ex. 2, *Declaration of Gary Sautter*¹ (*Sautter Decl.*), ¶ 4.

By terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs: "(4)(A) on January 1, 2041 or, if earlier, when...(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." *Sec'y. Stat.*, ¶ 4, Ex. 1, ¶ 3.

On or about July 14, 2015, the FHA mortgage insurance on Petitioner's primary mortgage was terminated as the lender indicated that the primary mortgage was paid in full. *Sec'y. Stat.*, Ex. 2, *Sautter Decl.*, ¶ 4. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remain indebted to HUD. *Sec'y. Stat.*, ¶ 5, Ex. 2, *Sautter Decl.*, ¶ 5-6.

In accordance with 31 C.F.R. 285.11(e) (2) (ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. A Notice of Intent to Initiate Administrative Wage Garnishment dated July 12, 2019 was mailed to Petitioner's last known address. *Sec'y. Stat.*, ¶ 7, Ex. 2, *Sautter Decl.*, ¶ 4-5.

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

- a. \$11,276.57 as the total unpaid principal balance as of December 30, 2020;
- b. \$ 319.26 as the unpaid interest on the principal balance at 1% per annum through December 30, 2020;
- c. \$ 1,573.71.00 as the unpaid penalties and administrative costs through December 30, 2020; and
- d. interest on said principal balance from December 31, 2020 at 1% per annum until paid.

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

Sec'y. Stat., ¶ 8, *Ex. 2*, *Sautter Decl.*, ¶ 6.

HUD proposes a debt repayment schedule of \$375.00 per month or an amount equal to 15% of Petitioner's monthly disposable income. *Sec'y. Stat.*, ¶ 10, *Ex. 2*, ¶ 11.

DISCUSSION

Petitioner claims that she does not owe the debt because it was allegedly paid in full at settlement when her home was sold. More specifically, Petitioner claims that "The day my escrow closed on the sale of my condo located at 6936 Doheny Pl. A Rancho Cucamonga a payoff payment was made that included the balance owed to HUD." Petitioner's *Request for Hearing (Hearing Request)* filed December 14, 2020. As support, Petitioner introduced into evidence copies of a payoff statement from the Bank of America, a title report from Orange Coast Title Company, Petitioner's paystubs, an Orange Coast Title Company Settlement Statement, and an email from the escrow officer confirming a payment was received at the Bank of America. It is unclear from the record the relevance of Petitioner's paystubs to her claim that the subject debt was paid in full at settlement.


Upon review, the Court has determined that the record of evidence lacks sufficient proof that the debt is not owed or is unenforceable. While Petitioner relies solely on the premise that the title company or the primary lender should have paid the subject debt at settlement, that assumption was not reasonable or responsible in this case. Any action or inaction by Orange Coast Title Company or the Bank of America is not relevant to the enforceability of the subject debt. For Petitioner not to be held liable for the full amount of the debt, Petitioner must produce either a release in writing directly from HUD that explicitly relieves Petitioner's obligation under the terms of the Note, or otherwise she must produce proof of "valuable consideration accepted by the lender" that indicates HUD's intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Petitioner has failed to produce either in this case.

While Petitioner acknowledges the subject debt existed, she must acknowledge further that the onus falls on her and not on the primary lender or Orange Coast Title Company to ensure that the subject debt is fully satisfied. Without such evidence, Petitioner's failure to meet her burden of proof renders the debt enforceable. 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 legally enforceable." *Sara Hedden*, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), *quoting Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore the Court must find, consistent with case law precedent, 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 December 16, 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 of \$375.00 per month 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.