

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

In the Matter of:

Penny Pope,

Petitioner

21-VH-0063-AG-036

721014781

March 28, 2022

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hearing Request*”) filed on February 1, 2021, by 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 February 4, 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 February 18, 2021, Petitioner filed a Statement to supplement her position in her *Hearing Request*. Thereafter, on February 19, 2021, the Secretary filed a *Statement*, along with documentary evidence, in support of his position. This case is now ripe for review.

FINDINGS OF FACT

This action is brought on behalf of the Secretary of the United States Department of Housing and Urban Development (“Secretary” or “HUD”) pursuant to 31 U.S.C. § 3720D.

In or about July 2018, the HUD-insured primary 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, Jr.*¹ (“*Gagliardi, Jr. Decl.*”) at ¶ 4).

¹ Larry Gagliardi, Jr. is the Acting Director of Asset Recovery Division for the U.S. Housing and Urban Development.

To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. In exchange for foreclosure relief, on July 12, 2018, Petitioner executed a Promissory Note ("Note") in the amount of \$14,930.19 in favor of the Secretary. *Sec 'y. Stat.*, ¶ 4; Ex. B-Note. 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.*, ¶ 4. Ex. B, ¶ 4(A)(i)).

On or about May 25, 2018, 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. A, *Gagliardi, Jr. Decl.* at ¶4; Ex. B, Note at ¶¶ 4(A)(i) & (iii)). 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 [HUD] may designate in writing by notice to Borrower." *Sec 'y. Stat.*, ¶ 7, Ex. B, Note at ¶ 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, *Gagliardi, Jr. Decl.* at ¶ 5; Ex. B, Note at ¶ 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 through January 30, 2020:

- a) \$10,491.68 as the unpaid principal balance;
- b) \$87.40 as the unpaid interest on the principal balance at 1% per annum;
- c) \$787.92 as the unpaid penalties and administrative costs; and,
- d) Interest on said principal balance from January 31, 2021 at 1% per annum until paid.

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

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated January 11, 2021 ("Notice") was sent to Petitioner. *Sec 'y. Stat.*, ¶ 10, *Gagliardi, Jr. 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 did not enter into a written repayment agreement in response to the Notice. *Sec 'y. Stat.*, ¶ 11, *Gagliardi, Jr. Decl.*, ¶ 7.

DISCUSSION

Petitioner claims that the subject debt does not exist because the debt has already been paid by the bank. *Petitioner's Supplemental Statement*, email dated 2/11/21. More specifically, Petitioner claims that she "provided the documentation to show that the funds were collected out of escrow per the bank of west provided payoff and paid to bank of the west. If there is a deficiency, please contact Bank of The West who is your representative for this loan." There is no record that Petitioner ever introduced into evidence such documentation as proof of payoff or release from the subject debt.

For Petitioner not to be held liable for the full amount of the subject debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation, "or valuable

consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). The Court is not convinced that Petitioner has met her burden of proof because Petitioner has not offered any evidence that demonstrates that HUD issued a written release of its lien or that Petitioner paid in full the debt so claimed by the Secretary. What the record does reflect is that full payment of the primary mortgage occurred and that the Secretary's claim that the subject debt is now due is warranted.

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). In this case, because Petitioner has failed to introduce into evidence proof that she was discharged from the subject debt, the Court must find that Petitioner's claim fails for lack of proof and further must find that Petitioner shall remain contractually obligated to pay the subject debt.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury on February 4, 2021 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 in the amount so claimed by the Secretary.

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.