

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

In the Matter of:

David W. Hopkins,

Petitioner

21-VH-0101-AG-062

1199280

January 6, 2023

DECISION AND ORDER

On March 22, 2021, David W. Hopkins (“Petitioner”) filed a hearing request concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government.

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 April 1, 2021, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On July 8, 2021, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed since the filing of his *Hearing Request* to file sufficient documentary evidence in support of his claim, or in response to the orders issued by this Court. 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.

On May 1, 1997, Petitioner executed and delivered Truth in Lending Disclosures (“Note”) in the amount of \$63,067.20 to Oakwood Acceptance Corp. (“Oakwood”), which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). *Secretary’s Statement*, ¶2, Ex. A, Note.

Oakwood was defaulted as an issuer of Mortgage-Backed Securities (“MBS”) due to its failure to comply with the Government National Mortgage Association’s (“Ginnie Mae”) MBS program requirements. *Secretary’s Statement*, ¶ 3, Ex. B, *Declaration of Rene Mondonedo (Mondonedo’s Statement)*¹ at ¶ 4. Upon default by Oakwood, all of its rights, title, and interest in Petitioner’s loan were assigned to Ginnie Mae by virtue of the Guarantee Agreement entered into between Ginnie Mae and First Beneficial. *Id.*

As Ginnie Mae (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. *Secretary’s Statement*, ¶ 4; Ex. B, *Mondonedo Declaration* at ¶5. Petitioner is currently in default on the Note. The Secretary has made efforts to collect from Petitioner but has been unsuccessful. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$19,157.29 as the unpaid principal balance;
- (b) \$21,666.35 as the unpaid interest on the principal balance through July 8, 2021; and
- (c) 2% interest on said principal balance until paid.
- (d) U.S. Treasury records indicate that a garnishment termination letter was sent to the debtor on September 12, 2008, because he was no longer employed.

Secretary’s Statement, ¶5, Ex. B, *Mondonedo Declaration* at ¶6.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Wage Garnishment Proceedings (“Notice”) dated March 22, 2021 was sent to Petitioner. *Secretary’s Statement* ¶6, Ex. B, *Mondonedo Declaration* at ¶7.

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 mutually agreeable terms. Petitioner failed

¹ Rene Mondonedo is Director of the Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association (“Ginnie Mae”).

to enter into a written repayment agreement in response to the Notice. *Secretary's Statement* ¶7, Ex. B *Mondonedo Declaration*, ¶8.

Ginnie Mae's proposed repayment schedule is 15% of Petitioner's disposable pay. (*Secretary's Statement* ¶7, Ex. B, *Mondonedo Declaration*, ¶8). The Secretary respectfully requests that the Court find Petitioner's debt past due and legally enforceable, and the Secretary's proposed repayment schedule fair. *Id.*

DISCUSSION

Petitioner objects to the existence and amount of the subject debt by claiming that the debt was paid off in 2011. Petitioner further claims financial hardship and states that proposed garnishment would render him "homeless" and also notes that while he was involuntarily terminated from his last job, he has been employed at his current job since 2004." *Petitioner's Hearing Request*. Beyond mere allegations, and a number of orders issued by the Court to Petitioner, he has failed to provide any documentary evidence in support of any of his claims. In response, the Secretary offered into evidence copies of the Note signed by Petitioner in which he agreed to pay the subject debt should it default, and an affidavit from the director of HUD's Mortgaged-Backed Securities Monitoring Division to verify that Petitioner remains obligated to pay the subject debt. Based on the evidence presented, the Secretary argues that Petitioner has failed to provide any evidence of a written release from the subject debt or any documentary evidence that demonstrates full satisfaction of the same. *Sec'y. Stat.*, ¶ 8.

For Petitioner not to be held liable for the full amount of the subject debt, there must either be 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). In addition, this Court has maintained that "[i]f satisfaction of a senior deed of trust prevents a junior trust holder from enforcing a junior trust deed on the same real property, the junior trust holder may collect the debt, now unsecured, by initiating collection efforts based on the obligations in the loan note." Mitchell and Rosalva Fraijo, HUDBCA No. 99-C-CH-Y200 at 3 (March 20, 2000); John Bilotta, HUDBCA No. 99-A-CH-Y258 (December 29, 1999) (citing Kimberly S. (King) Thede, HUDBCA No. 89-4587-L74 (April 23, 1990)).

In the instant case, the Secretary is accurate in his position that Petitioner has failed to produce any evidence of a written release from HUD that discharges Petitioner for the debt associated with the Note for the junior trust deed herein. Petitioner also failed to produce any evidence of valuable consideration paid to HUD in satisfaction of the subject debt that would otherwise render the subject debt unenforceable. The Subordinate Note herein is a separate and distinct debt from the primary mortgage. *See Catherine Coley*, HUDOA No. 16-VH-0147-AG-039 at 3 (July 24, 2017). The Note clearly indicates that it became due and payable when the borrower paid in full all amounts due under the primary mortgage. *Sec'y. Stat.*, Ex. A. Oakwood was defaulted by Ginnie Mae as an issuer of MBS due to its failure to comply with Ginnie Mae MBS program requirements. Therefore, all of Oakwood's rights and interest in Petitioner's loan were assigned to Ginnie Mae by virtue of the assignment contained in the Guaranty Agreement entered into between Oakwood and Ginnie Mae. As a result, Ginnie Mae is entitled to avail

itself of all available remedies in order to obtain repayment of this obligation. Without evidence to the contrary from Petitioner, this claim fails for lack of proof.

Next, Petitioner's claim of financial hardship fails for lack of sufficient evidence. The Court ordered Petitioner to provide the necessary evidence that would have assisted the Court in its assessment of the credibility of Petitioner's hardship claim but Petitioner failed to comply. Without evidence from Petitioner to otherwise prove that the proposed wage garnishment would create a financial hardship, the Court must find that Petitioner's contractual obligation to pay the Note remains intact and, as a result, Petitioner remains obligated to pay the subject debt.

As a final point, Rule 26.4(c) of Title 24 of the Code of Federal Regulations provides:

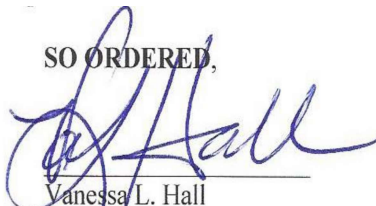
If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*. (emphasis added).

Because Petitioner also failed to comply with any of the Orders issued by this Court subsequent to the Hearing Request, Petitioner's non-compliance forms the basis for rendering a decision against him pursuant to Rule 26.4(c) of Title 24 of the Code of Federal Regulations.

ORDER

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

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount of 15% of Petitioner's disposable pay.

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.