

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

In the Matter of:

Janice Evans,

Petitioner

21-VH-0182-AG-098

721017450

June 30, 2022

DECISION AND ORDER

On July 1, 2021, Janice Evans (“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 July 26, 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 September 27, 2021, the Secretary filed his *Statement* along with documentation in support of his position. In response, Petitioner filed her *Statement* and documentary evidence on April 20, 2022 in support of her claim and in response to the orders issued by this Court. 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 3720D, because of a defaulted loan that was insured against non-payment by the Secretary.

In or about November 2010 and again in September 2012, 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, filed September 27, 2021, Ex. A, *Declaration of Larry Gagliardi Jr.* ("Gagliardi Decl.") at ¶ 4.

To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Id.* In exchange for foreclosure relief, on November 18, 2010 and again on September 19, 2012, Petitioner executed a Subordinate Note ("Note") in the amount of \$3,082.05 and \$2,476.71, in favor of the Secretary. *Sec'y Stat.*, Ex. B.

Paragraph 4(A) of the Notes 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. A, *Gagliardi Decl.*, ¶ 4; Ex. B, Note at ¶ 4(A)(i). On or about February 25, 2020, 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.* ¶ 4, Ex. A, *Gagliardi Decl.* at 5; 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 Notes at the place identified in paragraph 4(B) of the Notes. *Sec'y. Stat.* ¶ 6, Ex. A, *Gagliardi Decl.* at 5; Ex. B, Note at ¶ 4(B). Petitioner failed to make payment on the Notes 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 ¶ 5.

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 June 30, 2021:

- (a) \$5,558.76 as the unpaid principal balance;
- (b) \$23.15 as the unpaid interest on the principal balance at 1.0% per annum;
- (c) \$386.92 as the unpaid Penalties and Administrative Costs; and
- (d) interest on said principal balance from July 1, 2021 at 1.0% per annum until paid.

Sec'y. Stat. ¶ 9, Ex. A, *Gagliardi Decl.* at ¶ 6.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated June 15, 2021 ("Notice") was sent to Petitioner. *Sec'y. Stat.* ¶ 10, Ex. A, *Gagliardi Decl.* at ¶ 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.* ¶ 10, Ex. A, *Gagliardi Decl.* at ¶¶ 7-8.

HUD's proposed repayment schedule is \$165.80 per month, which will liquidate the debt in three years as recommended by the Federal Claims collection, or 15% of Petitioner's disposable pay. *Sec'y. Stat.* ¶ 10, Ex. A, *Gagliardi Decl.* at ¶8.

DISCUSSION

Petitioner claims that she does not owe the subject debt because her primary mortgage was paid in full. More specifically, Petitioner states that she, "requested a payoff with Midland Mortgage in February 2020." Upon receipt she mailed in a cashier's check for the balance and was "given a letter of satisfaction" for the loan. *Petitioner's Hearing Request (Hrg. Req.)*, filed July 1, 2021. As support, Petitioner presented copies of the letter of satisfaction from Midland Mortgage for the primary mortgage and the Notice of Intent for Wage Garnishment received by Petitioner.

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), the burden of proof is on the Petitioner to show, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect, or to prove that the collection of the debt may not be pursued due to operation of law. Furthermore, 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 this case, Petitioner did not offer into evidence a copy of a written release from HUD that discharged Petitioner for the debt associated with the Note. Petitioner likewise offered no evidence of valuable consideration paid to HUD in satisfaction of the subject debt that, if produced, would have rendered the subject debt unenforceable. The Subordinate Note is a separate and distinct debt from the primary mortgage referenced by Petitioner. See Catherine Coley, HUDOA No. 16-VH-0147-AG-039 at 3 (July 24, 2017).

On March 5, 2020, Petitioner's primary mortgage was paid in full and consequently triggered the timeline for the Subordinate Note to become due. 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. B ¶ 4(A)(i). Without evidence from Petitioner to otherwise prove that the subject debt, not the primary mortgage, has already been paid, Petitioner's contractual obligation under the existing Note remains intact.

Petitioner's misunderstanding that paying off the primary mortgage serves as satisfaction of the subject debt is in error. This Court has consistently 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 this case, the Secretary's right to collect the subject debt emanates from the terms of the Note and that junior trust holder herein is HUD. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). Offering into evidence a Letter of Satisfaction that is associated with the primary mortgage fails as sufficient proof that the subject debt is also satisfied, particularly when HUD was not a party to that contract.


Based on a review of the existing record, this Court is unable to determine the credibility of Petitioner's claim in the absence of evidence from the Petitioner that either refutes or rebuts what the Secretary has offered. Therefore, the Court must find that Petitioner's claim fails for lack of proof.

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 \$165.80 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or at 15% of Petitioner's disposable pay.

SO ORDERED.



Vanessa L. Hall
Administrative Judge