

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

In the Matter of:

Kristy L. Boismier,

Petitioner

21-VH-0191-AG-107

721017186

January 18, 2023

DECISION AND ORDER

This proceeding is before the Court upon a *Request for Hearing (Hearing Request)* filed on July 29, 2021, by Kristy L. Boismier (“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 July 29, 2021, 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 September 29, 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 May 10, 2022, May 17, 2022, and June 2, 2022. 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 August 9, 2014, Kristy L. Boismier ("Petitioner") executed and delivered to the Secretary a *Partial Claims Promissory Note* (the "Note") with an Effective Date of August 5, 2014, in the principal amount of \$15,831.59. Petitioner also executed a *Subordinate Mortgage* related to the Note. *Secretary's Statement (Sec 'y. Stat.)* ¶ 2, Ex. 1, Note and Subordinate Note. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Secretary's Statement (Sec 'y. Stat.)* ¶ 2, Ex. 2, *Declaration of Gary Sautter*¹ ("*Sautter Decl.*") ¶ 4.

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 a Note in favor of the Secretary. *Sec 'y. Stat.* ¶ 4, Ex. 1, Note, Ex. 2, *Sautter Decl.* ¶ 4. Paragraph 3(A) of the Note cites specific events that make the debt become due and payable. By terms of the Note, the amounts to be repaid thereunder become due and payable when the first of the following events occurs (3)(A) [o]n 12/1/2042, or if earlier, when the first of the following events occurs: (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. One of those events is the payment in full of the primary note. *Sec 'y. Stat.* ¶ 5, Ex. 1, Note at ¶ 3(A)(i)); Ex. 2, *Sautter Decl.* ¶ 4.

On or about December 12, 2019, 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. 1, Note at ¶¶ 3(A)(i) & (iii)), Ex. 2, *Sautter Decl.* ¶ 4. 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 Lender may designate in writing by notice to Borrower." *Sec 'y. Stat.* ¶ 7, Ex. 2, *Sautter Decl.*; Ex. 1, ¶ 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 became delinquent. *Sec 'y. Stat.* ¶ 7, Ex. 2, *Sautter Decl.* at ¶ 6; Ex. 1, Note ¶ 3(B)).

HUD has attempted to collect the amounts due under the Note, but Petitioner remains indebted to HUD. Therefore, Petitioner is justly indebted to the Secretary in the following amounts as of July 30, 2021:

- (a) \$15,831.59 as the unpaid principal balance as of July 30, 2021;
- (b) \$263.90 as the unpaid interest on the principal balance at 2.0% per annum;

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

- (c) \$1,008.51 interest on said principal balance from July 30, 2021; and,
- (d) interest on said principal balance from July 31, 2021, at 2.0% per annum until paid.

Sec'y Stat. ¶ 8, Ex. 2, *Sautter Decl.* ¶5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated June 2, 2021 was sent to Petitioner. *Sec'y Stat.* at ¶ 6, Ex. 2, *Sautter Decl.* ¶5-7.

In accordance with 31 C.F.R. § 285.11 (e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. Petitioner has not entered into a written repayment agreement in response to the Notice. *Sec'y Stat.* at ¶ 8, Ex. 2, *Sautter Decl.* ¶5-7.

HUD's efforts to obtain Petitioner's current income information were unsuccessful. *Sec'y Stat.* at ¶ 8, Ex. 2, *Sautter Decl.*, ¶ 10. Therefore, HUD proposes a debt repayment schedule of \$500.00 per month, which will liquidate the debt in approximately three years, as recommended by the Federal Claims Collection Standards. Alternatively, HUD requests a repayment schedule in an amount equal to 15% of Petitioner's disposable income. *Sec'y Stat.* at ¶ 10.

The Secretary respectfully requests a finding that the Petitioner's debt is past due and legally enforceable; and further that the stay of collection of the debt by the Federal Government be vacated. *Id.*

DISCUSSION

Petitioner first argues that the subject debt is non-existent and that she "was under the understanding that when I closed my mortgage with Fifth Third bank that all funds were cleared, and [the] mortgage was paid off." As support, Petitioner offered into evidence copies of a *Closing Disclosure Package* which included the *Payoff Receipt* for the first mortgage and a *Settlement Statement*. *Petitioner's Documentary Evidence*, Attachments.

For Petitioner not to be held liable for the full amount of the subject debt, there must be either a release in writing from HUD explicitly relieving Petitioner of her contractual obligation, or "valuable consideration accepted by HUD" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). After reviewing the record, the Court has determined that Petitioner has failed to meet her burden of proof that the debt no longer exists because Petitioner has failed to offer proof that HUD has issued to her a written release from her obligation under the Note.

The Secretary's right to collect the subject debt stems from the terms of the Note, not from the terms of payoff statements or settlement statements from the primary lender. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). So, "[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, Petitioner did not offer sufficient proof that the junior lender (HUD) received proceeds from the settlement in full satisfaction of the senior lien and the junior lien together. For Petitioner to be released of liability for the Note, the proceeds from the settlement must have paid in full both the partial promissory note and the subordinate note. That did not occur in this case. Absent a showing that the settlement proceeds equaled or exceeded the full amount owed by Petitioner, Petitioner shall otherwise remain responsible for payment of the subject debt due. See Maura O’Keefe, HUDBCA No. 86-1194- F202 (January 7, 1986); Lawrence P. Pappau, HUDBCA No. 87-2381- G701 (July 31, 1987). Therefore, the Court finds that neither the *Disclosure Form*, *Payoff Receipt*, or the *Settlement Statement* offered by Petitioner serves as credible or sufficient proof that the subject debt is unenforceable against her.

Next, Petitioner argues that “An interest charge of over \$6299.69 is extreme.” Based on the record, the Court has determined that Petitioner offered no evidence to prove to the Court that the interest charged was too extreme to be enforceable against her. HUD is required by law to charge interest and fees on past due debts. HUD Delinquent Debt Collection Handbook (Handbook), § 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. HUD is also 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 that remains due on the subject debt. 31 C.F.R. § 901.9(f). As a result, the Court finds Petitioner’s claim challenging the interest charged to be without merit. Such applicable interest, fees, administrative costs, and penalties are due as required under governing regulations.


Finally, Petitioner requests “If the decisions is [sic] not in my favor I would like to ask the court to let me pay the \$15832.59 on my own through a payment plan.” The alternative repayment plan offered by Petitioner in lieu of the current balance of the subject debt, plus applicable fees, is a decision that is beyond the scope of this 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 wish to consider requesting a review of her household’s financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter on July 29, 2021 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 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.