

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

In the Matter of:

Valerie Harden (Haygood),

Petitioner.

21-VH-0198-AG-113

721016724

January 19, 2023

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on July 14, 2021, by Petitioner Valerie Harden (“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 pursuant to 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 withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On August 24, 2021, the Secretary filed her *Statement* along with documentation in support of her position. On May 2, 2022, Petitioner filed her *Statement* and documentary evidence in support of her position that the debt does not exist. 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.

In or about March 2014, the HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Sec'y. Stat.* ¶ 2, Ex. A, *Declaration of Gary Sautter* ("Sautter Decl.")¹, ¶ 4; Ex. B, Note. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's FHA insured mortgage lender. *Sec'y. Stat.* ¶ 3; Ex. A, *Sautter Decl.*, ¶ 4. In exchange for foreclosure relief, on March 14, 2014, Petitioner executed a Subordinate Note ("Note") in the amount of \$19,994.24 in favor of the Secretary. *Sec'y. Stat.* ¶ 4; Ex. A, *Sautter Decl.*, ¶ 4. 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.* ¶ 5; Ex. B, Note, at ¶ 4(A)(i).

On or about October 4, 2019, the FHA mortgage insurance on Petitioner's primary mortgage was terminated as the lender indicated the primary note and mortgage was paid in full. As a result, HUD attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.* ¶ 6; Ex. A, *Sautter Decl.*, ¶ 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 Lender may designate in writing by notice to Borrower." *Sec'y. Stat.* ¶ 7, Ex. B, ¶ 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 became delinquent. *Sec'y. Stat.* ¶ 8, Ex. A, *Sautter 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 as of July 30, 2021:

- a) \$19,994.24 as the total unpaid principal balance;
- b) \$599.94 as the unpaid interest on the principal balance at 2.0% per annum;
- c) \$2,466.92 as the unpaid penalties and administrative costs as of July 30, 2021; and
- d) interest on said principal balance from August 1, 2021 at 2.0% per annum until paid.

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

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated April 30, 2021 ("Notice") was sent to Petitioner. *Sec'y. Stat.* ¶ 10; *Sautter Decl.*, ¶ 6. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written

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

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.* ¶ 11; *Sautter Decl.*, ¶ 7.

HUD attempted to obtain Petitioner's current paystub, but it was not provided. Therefore, the Secretary's proposed repayment schedule is \$640.58 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay. *Sec'y. Stat.* ¶ 16; *Sautter Decl.*, ¶ 9. 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 claims that she does not owe the debt because it was paid off when her home was sold. Petitioner further claims that "I'm disputing this case because this home was sold in October of 2019 and the Deeds from Bank of America and Carrington Mortgage / Orion Financial Group, Inc has been settled. The Mortgage was sold to Carrington from Bank of America and paid in full." *Petitioner's Statement*, Attachments. As support, Petitioner offered into evidence copies of the *Payoff Letter* from Bank of America; a *Release of Deed to Secure Debt*; and an *Assignment of Mortgage*.

In this case, Petitioner's record of evidence remains insufficient as proof that the subject debt is non-existent and unenforceable. For Petitioner not to be held liable for the full amount of the debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation to pay, "or valuable consideration accepted by the lender" indicating intent to release. *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Petitioner has only produced documentation pertaining to full payment of the primary mortgage, not full payment of the Note. Petitioner has failed to produce any evidence of a written release from HUD that discharged Petitioner for the debt associated with the Note, or proof of any valuable consideration paid to HUD in satisfaction of the subject debt to render the subject debt unenforceable.

The Secretary's right to collect the subject debt stems from the terms of the Note, not from the terms of a payoff statement, a deed of trust, or a settlement statement 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 primary mortgage and the subordinate note. That did not occur in this case. Absent a showing that the settlement proceeds equaled or exceeded payment of the full amount owed by Petitioner, Petitioner shall remain responsible for the balance due on the subject debt. *See Maura*

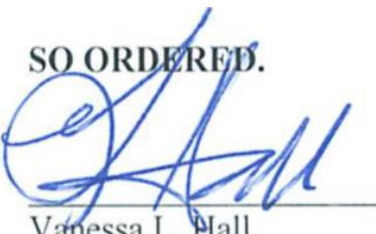
O'Keefe, HUDBCA No. 86-1194- F202 (January 7, 1986); Lawrence P. Pappau, HUDBCA No. 87-2381- G701 (July 31, 1987).

It is well established 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). Evidence to refute the Secretary’s claim has not been presented in the record of this proceeding. Therefore, the Court must find that neither the *Payoff Letter* nor the *Release of Deed to Secure Debt* offered sufficient evidence that effectively discharged Petitioner from the subject debt owed to HUD.

ORDER

Based on the foregoing, Petitioner shall remain contractually obligated to pay the debt so claimed by the Secretary.

The *Order* imposing the stay of referral of this matter to the U.S. Department of Treasury on July 29, 2021 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 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.