

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

In the Matter of:

**Jon and Shannon Jakas,**

Petitioners.

21-VH-0245-AG-145

721017801

February 6, 2023

**DECISION AND ORDER**

On August 25, 2021, Jon and Shannon Jakas (“Petitioners”) 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 September 21, 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 October 22, 2021, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioners have failed to file sufficient documentary evidence in support of their claims or in compliance with 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.

Jon and Shannon Jakas (“Petitioners”) obtained a HUD-insured mortgage loan to purchase the subject property. *Secretary’s Statement (Sec’y Stat.)*, ¶ 2; Ex. 1, *Declaration of Brian Dillon*<sup>1</sup> (*Dillon Decl.*), ¶ 4. Following Petitioners’ default under the HUD-insured mortgage, HUD approved a partial claim pursuant to the Home Affordable Modification Program (“HAMP”) in order to protect Petitioners from foreclosure and bring their delinquent mortgage arrears current. *Sec’y. Stat.* ¶ 3; Ex. 1, *Dillon Decl.*, ¶ 4.

In exchange for foreclosure relief, Petitioners executed a Subordinate Note on February 9, 2016 in the amount of \$124,207.20 in favor of the Secretary. *Sec’y. Stat.* ¶ 4; Ex. 2, Subordinate Note (Note). The Subordinate Note does not require periodic payments but mandates the full repayment of the principal balance upon the earlier of: (1) March 1, 2046; (2) payment in full of the primary, HUD-insured note; (3) the acceleration of the primary, HUD-insured note; (4) the termination of HUD insurance; or (5) the property securing the note is no longer used as Petitioners’ primary residence. *Sec’y. Stat.* ¶ 5; Ex. 2, Note, ¶ 4.

On or about April 8, 2020, Petitioners’ primary, HUD-insured mortgage was paid in full and payment to HUD became due pursuant to paragraphs 4(a)(i) and (iii) of the Subordinate Note. *Sec’y. Stat.* ¶ 6; Ex. 1, *Dillon Decl.*, ¶ 4. The Secretary has made efforts to collect this debt from Petitioners but has been unsuccessful. Therefore, Petitioners are justly indebted to the Secretary in the following amounts:

- (a) \$124,207.20 as the unpaid principal balance as of September 30, 2021;
- (b) \$724.22 as the unpaid interest on the principal balance at 1.0% per annum through September 30, 2021;
- (c) \$7,529.54 as the unpaid Penalties and Administrative Costs as of September 30, 2021.
- (d) interest on said principal balance from October 1, 2021, at 1.0% per annum until paid. *Sec’y. Stat.* ¶ 7; Ex. 1, *Dillon Decl.*, ¶ 5. A Notice of Intent to Initiate Administrative Wage Garnishment dated August 4, 2021 was sent to Petitioners.

*Sec’y. Stat.* ¶ 8; Ex. 1, *Dillon Decl.*, ¶ 6.

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<sup>1</sup> Brian Dillon is Director of Asset Recovery Division for the U.S. Housing and Urban Development.

The Secretary has been unable to obtain Petitioners' current pay stubs and, therefore, proposes a repayment schedule of \$3,676.60 per month, which will liquidate the debt in three years, or 15% of Petitioners' disposable pay. *Sec'y. Stat.* ¶ 13.

Based on the foregoing, the Secretary respectfully requests that the Court find Petitioners' debt past due and legally enforceable, and the Secretary's proposed repayment schedule fair. *Id.*

## **DISCUSSION**

Petitioners first maintain that they “do not owe this money. We don’t own the property as it was sold in April 2020.” *Petitioners’ Hearing Request (Hrg. Req.)*, filed August 25, 2021. As support, Petitioners referred the Court to phone numbers for their legal counsel. No other documentary evidence was provided.

For Petitioners not to be held liable for the full amount of the subject debt, referrals to legal counsel does not serve as sufficient proof that the subject debt was paid in full. There must either be a release in writing from the former lender explicitly relieving Petitioners of their obligation, or proof of “valuable consideration accepted by the lender” indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Petitioners have failed to produce evidence of a written release from HUD that discharges Petitioners for the debt associated with the Note. They also have failed to offer proof that valuable consideration was offered in satisfaction of the subject debt that would otherwise render the subject debt unenforceable.

Case law precedent has established 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)). Here, the Note is considered 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 states that a default on the Note consists of certain events or conditions that trigger a secured party’s right to cure the default, one of which is the borrower’s default on payment of any installment of the total number of installments due on the Note. *Sec’y. Stat.*, Ex. 2, ¶ 3(a). In this case, upon the occurrence of Petitioners’ non-payment, the Note became immediately due and payable in full. *Id.* Without evidence from Petitioners to prove otherwise, Petitioners’ contractual obligation to pay the Note remains intact. Therefore the Court finds this claim fails for lack of proof.

Next, Petitioners contend that they each had been unemployed for an extended period of time. But Petitioners also claim that they had new jobs scheduled to begin on “8/9/21” for Jon, and “8/30/21” for Shannon. To date, Petitioners have failed to offer proof from both of unemployment, length of reemployment, or proof of hardship, despite the Court issuing an Order for them to produce such evidence for the Court’s review. See Order for Clarification dated July 29, 2022. Because Petitioners have failed to meet their burden of proof, the Court is unable to

determine the credibility of Petitioners' position and therefore again must find that Petitioners' claim fails for lack of sufficient proof.

**ORDER**

Based on the foregoing, the Order issued on September 1, 2021 that imposed the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is hereby **VACATED**.

The Secretary is authorized to seek 15% of Petitioners' disposable pay in satisfaction of the debt due and now enforceable.

SO ORDERED.



Vanessa L. Hall  
Administrative Judge

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**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.