

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS
Washington, D.C.

In the Matter of:

NATASHA GIBSON,

Petitioner.

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) Judge H. Alexander Manuel
)
) HUDOHA No. 22-AM-0029-AG-0025
)
) Claim No. 7059017 1ST BEN 9248
) July 31, 2023

DECISION AND ORDER

On or about November 16, 2021, Natasha Gibson, (“Petitioner”) filed a Request for Hearing concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishments as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the administrative judges of this Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

As a preliminary matter, the Secretary has filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable and Proposed Repayment Schedule*, dated February 8, 2022, (“*Sec’y. Stat.*”) attaching the *Declaration of Sharon Wandrick*, (“*Wandrick Decl.*”), Supervisor, Monitoring and Serveillance Division of the Government National Mortgage Association (“Ginnie Mae”) with the United States Department of Housing and Urban Development (“HUD”), dated January 18, 2022, as Exhibit C thereto. Upon consideration, the Court finds that the *Sec’y. Stat.*, together with the documentary evidence attached thereto constitutes *prima facie* evidence that the alleged debt in this case is due and owing by Petitioner.

BACKGROUND

On March 20, 2000, Petitioner and her then husband, Ronald Gibson, executed a Promissory Note (“Note”) for the purchase of a Summit Crest Mobile Home, payable to First Beneficial Mortgage Corporation (“1st Beneficial”) in the amount of \$38,240.00 with interest of 9% accruing on the unpaid balance. *Sec’y. Stat.* Exhibit A. Principal and interest payments were due monthly beginning on April 20, 2000, payable in full at the date of maturity on March 20, 2020. *Id.*

1st Beneficial was defaulted by Ginnie Mae as an issuer of MBS due to its failure to comply with Ginnie Mae's MBS program requirements. *See Wandrick Decl.* ¶ 4, *Sec'y. Stat.* ¶ 4. As a result, all of 1st Beneficial's rights and interests in Petitioner's loan were assigned to Ginnie Mae by virtue of the assignment contained in the Guaranty Agreement entered into between 1st Beneficial and Ginnie Mae. *Sec'y. Stat.* ¶ 5 and Exhibit B.

Therefore, Ginnie Mae became the rightful holder of Petitioner's loan. *Wandrick Decl.* ¶ 5. As the holder of the loan, Ginnie Mae is and was entitled to obtain repayment of Petitioner's loan obligation. *Wandrick Decl.* ¶ 5, *Sec'y. Stat.* ¶ 3. Although HUD made efforts to collect the amounts owed on Petitioner's Promissory Note, those efforts were unsuccessful. *Wandrick Decl.* ¶ 6, *Sec'y. Stat.* ¶ 7.

The Secretary maintains that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$37,861.65 as the unpaid principal balance;
- (b) \$56,244.63 as the unpaid interest on the principal balance through January 18, 2022;
- (c) \$0 in administrative fees;
- (c) \$21,040.17 in Assessed Penalty Fee; and
- (d) 2% interest on said principal balance until paid.

Wandrick Decl. ¶ 6; *Sec'y. Stat.* ¶ 7.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated October 20, 2021 ("Notice") was sent to Petitioner as required by 31 C.F.R. § 285.11(e). *Wandrick Decl.* ¶ 7; *Sec'y. Stat.* ¶ 8. 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. *Wandrick Decl.* ¶ 7; *Sec'y. Stat.* ¶ 9. Petitioner did not enter into a written repayment agreement. *Wandrick Decl.* ¶ 8; *Sec'y. Stat.* ¶ 17. Therefore, Ginnie Mae's proposed repayment schedule is 15% of Petitioner's disposable pay. *Wandrick Decl.* ¶ 8; *Sec'y. Stat.* ¶ 17.

DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. *See* 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. *See* 31 C.F.R. § 285.11(f)(8)(ii). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue hardship to Petitioner, or that the alleged debt is legally unenforceable. *Id.*

As evidence of the Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement* together with a copy of the Note (Exhibit A), the Assignment of the Note from 1st Beneficial to HUD (Exhibit B) and the sworn Declaration of Sharon Wandrick (Exhibit C). Accordingly, this Court finds that the Secretary has met her initial burden of proof.

In her *Request for Hearing*, on November 10, 2021, Petitioner executed and filed her hearing request opposing the Secretary's proposed wage garnishment. (*"Pet. Hearing Req."*). Petitioner claims that she does not owe the debt. *Pet. Hearing Req.*, pg. 3. Petitioner does not dispute the existence or amount of the debt incurred, or that the debt is delinquent. Rather, Petitioner contends that the debt is unenforceable because pursuant to her divorce settlement she was released of responsibility for the debt. *Pet. Hearing Req.*, pg. 6 at ¶ 3. Specifically, the agreement states that Petitioner is "...held harmless for any associated debts [with regard to the 1999 double-wide mobile home], including the mortgage payments...." *Id.*

Petitioner's obligation to repay the Note derives from the terms of the Note itself. *See Sec'y. Stat.* ¶ 12 (citing *In Re Alberta A. Woods*, HUDOA No. 10-H- NY-AWG (June 25, 2009) at p. 3. The express language of the Note, signed and agreed to by Petitioner, states that "...the undersign promises to pay...the sum of \$38,240.00...with interest on any remaining balance of principal at 9%." *Sec'y. Stat.* Exhibit A.

Petitioner's divorce settlement does not release her from liability for the Note executed by both she and her former spouse. The original creditor, 1st Beneficial, and now HUD by assignment, are third party creditors that were not parties to the divorce agreement. "A divorce decree purporting to release Petitioner from this joint obligation does not affect the claims of an existing creditor unless the creditor was a party to the action." *William Holland*, HUDBCA No. 7-6439155-0 (October 12, 2000); (citing *Janet T. Rodocker*, HUDBCA No. 00-A-CH-AA17 (May 22, 2000)). HUD, as a third-party creditor, is not bound by a settlement, divorce decree, or other debt transfer agreement between parties when HUD is not a party to the instrument or arrangement. *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003) (citing *Wendy Kath*, HUDBCA No. 89-4518-L8, at 2). Therefore, the Court finds that, because HUD did not agree to this transfer of its debt obligation between Petitioner and her former husband, HUD's interest is unaffected and Petitioner remains indebted to HUD, notwithstanding her divorce agreement.

In order to assist Petitioner, the Secretary points out that under the guidance of counsel and separate from this proceeding, Petitioner may wish to pursue an indemnification action in the state or local courts against her former husband to enforce the divorce agreement. *Sec'y. Stat.* ¶ 15; *see also Tony Oxford*, HUDOHA No. 21-AM-0168-AG-089 (July 9, 2022); *William Holland*, HUDBCA No. 7-6439155-0 (October 12, 2000); *Janet T. Rodocker*, HUDBCA No. 00-A-CH-AA17 (May 22, 2000). Although Petitioner may pursue enforcement of the divorce settlement against her former husband in state or local court to recover monies she pays to HUD to satisfy the Note, as stated prior - Petitioner remains liable for the repayment of this debt to the Secretary.

Accordingly, the Secretary may proceed against Petitioner for the full amount of the debt set forth in the *Sec'y. Stat.* ¶ 7, and as attested to in the *Wandrick Decl.* ¶ 6.

Further, while Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend or accept any payment plan or settlement offer on behalf of the Department. If Petitioner wishes to discuss a payment plan, Petitioner may

discuss the matter with Michael DeMarco the Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859 or write to HUD Financial Operation Center, 50 Corporate Circle, Albany, NY 12203-5121. Petitioner is also entitled to seek reassessment of this financial hardship determination in the future in the event that she experiences materially-changed financial circumstances. See 31 C.F.R. §285.11(k).

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is:

ORDERED that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. The Secretary is authorized to seek administrative wage garnishment in the amount of 15% of Petitioner's disposable income per month, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable income per month. It is

FURTHER ORDERED that the *Stay of Referral* of this matter to the U.S. Department of the Treasury for collection that was previously entered in this case is hereby **VACATED**.

SO ORDERED,



H. Alexander Manuel
Administrative Judge

APPEAL NOTICE: You have the right to move for reconsideration of this case before the HUD Office of Hearings and Appeals within 20 days of the date of this ruling or decision; or, thereafter, to reopen this case. Ordinarily, such motions will not be granted absent a demonstration by the movant that there is substantial new evidence to be presented that could not have been presented previously. An appeal may also be taken of this decision to the appropriate United States District Court. For wage garnishments cases, See 24 C.F.R. § 17.81, 31 C.F.R. § 285.119f), and 5 U.S.C. 701, et seq. For administrative offset cases, See 24 C.F.R. § 17.73(a), and 5 U.S.C. § 701, et seq.