

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

In the Matter of:

Jenisha Lester,

Petitioner

22-VH-0165-AG-109

721018416

October 20, 2023

DECISION AND ORDER

On May 18, 2022, Jennifer Lester (“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 (“HUD” or “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.

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 May 19, 2022, 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 July 19, 2022, the Secretary filed her *Statement* along with documentation in support of her position. On November 10, 2022 and August 3, 2023, Petitioner filed her *Statement* along with documentary evidence in support of her claim. 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.

The Secretary contends in her *Statement* that “On or about November 18, 2016, Jenisha Lester (“Petitioner”) executed and delivered to the Secretary a Partial Claim Promissory Note (the “Note”) dated November 9, 2016, in the principal amount of \$22,587.29.” As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner’s FHA insured first mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary.

By the terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs (3)(A)[o]n December 1, 2046 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; (iv) or the property is not occupied by the purchaser as his or her principal residence.

On or about July 10, 2020, the FHA Insurance on Petitioner’s primary mortgage was terminated, as the lender indicated that the mortgage was paid in full. HUD’s records indicate that the debt owed pursuant to the Note is enforceable and past due. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated January 5, 2022, was mailed to Petitioner’s last-known address. Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$20,583.71 as the unpaid principal balance as of May 31, 2022;
- b. \$102.84 as the unpaid interest on the principal balance at 1.0% per annum through May 31, 2022; and
- c. interest on said principal balance from June 1, 2022, at 1.0% per annum until paid.

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. However, to date, Petitioner has not entered into any such agreement.

HUD was unable to obtain Petitioner’s current income information. Therefore, the Secretary proposes a repayment schedule of \$574.62 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collections Standards; or alternatively, a repayment schedule in an amount equal to 15% of Petitioner’s disposable income.

The Secretary respectfully requests a finding that the Petitioner's debt is past due and legally enforceable, and authorization of the proposed repayment schedule.

DISCUSSION

Petitioner claims that the subject debt is already paid in full and does not exist. As support, Petitioner presented copies of a Release of Lien from Wells Fargo and email communications she had with the Community Title Company and with HUD.

According to Petitioner, when she sold the property located at 1810 Brooks Drive, Lancaster, TX 75134 on July 10, 2020, she had a loan modification from 2015 in place for the property. When the Petitioner sold the property, her understanding was that the loan modification was no longer in place because “the modification amount was included in the total payoff.” Petitioner understood this to mean the subject debt was no longer in existence. In response, the Secretary claims that “[c]ontrary to her [Petitioner’s] claim, in an email Petitioner sent to HUD on September 14, 2021, she stated that she was “not disputing the fact that a loan modification was in place.” The uncontroverted evidence presented as support for the Secretary demonstrates that Petitioner executed the Note and, upon default, is now obligated to abide by its terms. Because the Secretary’s right to collect the debt is governed by the terms of the Note, Petitioner’s obligation remains intact. *See* Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007).

Petitioner apparently misunderstood that satisfaction of the indebtedness to Wells Fargo was not considered satisfaction of the subject debt. Wells Fargo, not HUD, is a party to the contract for the primary mortgage and the loan modification agreement. The terms of the Note, not the terms of the modification agreement, dictate the obligations of HUD and Petitioner as parties to the Note here. When the property was sold and the Release of Lien was issued by Wells Fargo, the primary mortgage alone was paid in full. As a result, Petitioner remains obligated to pay the subject debt.

To prove that this debt does not exist, Petitioner must offer a written release from HUD to Petitioner or evidence of valuable consideration accepted by HUD from Petitioner. *See Hediéh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Neither has occurred in this case because the evidence offered by Petitioner to date is insufficient. This Court has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or is unenforceable.” *See Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), *citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, the Court finds Petitioner’s claim fails for lack of proof.

ORDER

Based on the foregoing, Petitioner shall pay the subject debt as claimed by the Secretary.

The Order imposing the stay of referral of this matter on May 19, 2022 to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment of \$574.62 per month or an amount equal to 15% of Petitioner’s disposable income.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Finality of Decision. Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).