

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

In the Matter of:

**Anna Bolton**

Petitioner

23-VH-0146-AG-077

721019654

September 13, 2024

**DECISION AND ORDER**

This proceeding is before the Tribunal upon a *Request for Hearing (Hearing Request)* filed on August 14, 2023, by Anna Bolton (“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 Tribunal 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 August 21, 2023, this Tribunal 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 October 13, 2023, the Secretary filed her *Statement (Sec’y. Stat.)* along with documentation in support of her position. In response to the Secretary, Petitioner filed a written *Statement* along with documentary evidence in support of her position on October 30, 2023. 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.

According to the Secretary, Anna C. Bolton (“Petitioner”) executed and delivered to the Secretary a Subordinate Note (the “Note”) dated August 7, 2014, in the principal amount of \$2,107.06. 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 (4)(A)[o]n August 1, 2044 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 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.

The Secretary states that on or about December 13, 2021, 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 amounts due pursuant to the Note, but Petitioner remains indebted to HUD.

Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$2,107.06 as the unpaid principal balance as of July 30, 2023;
- b. \$14.08 as the unpaid interest on the principal balance at 1.0 % per annum through July 30, 2023;
- c. \$179.13 as unpaid penalties and administrative costs as of July 30, 2023; and
- d. interest on said principal balance from July 31, 2023, at 1.0 % per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated July 5, 2023 (the “Notice”), was mailed to Petitioner’s last-known address. In accordance with 31 C.F.R. 285.11(e)(2)(ii) and the Notice, Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. However, Petitioner did not enter into any such agreement.

Petitioner provided HUD with a copy of her pay information as of August 4, 2023. Accordingly, the Secretary proposes an administrative wage garnishment repayment schedule of \$242.41 biweekly, or an amount equal to 15% of Petitioner's disposable pay.

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

## **DISCUSSION**

Petitioner first argues that she does not owe the subject debt because it was allegedly paid in full at settlement when she sold the property; and second that, if it is determined that she is responsible for the debt, she would like to schedule a repayment arrangement instead of collection by wage garnishment to satisfy the debt. As support, Petitioner offers into evidence copies of a payoff statement received from US Bank 11/18/2021 for \$57,879.12 stating this included a deferred LDPA second mortgage loan; verification of receipt of payoff funds from US Bank received on 12/13/2021; and a Corporate Deed of Release for the mortgage at [REDACTED] sold on 12/10/2021.

In her *Statement* Petitioner maintains that, based on the evidence submitted, the subject debt has already been paid. But, she further claims that "US Bank states that they have purged all of my payment history (mortgage history) from their system. I'm not sure how they can do that with the house only being sold less than two years ago. With that being said I don't know how I can be held liable for something I have no way of proving I do not owe. All HUD payments were to be set up through my mortgage payment." After reviewing the record, this Tribunal still maintains that Petitioner has failed to meet her burden of proof that the subject debt was paid in full.

Petitioner's argument, that US Bank purged her payment history and thus rendered her unable to prove her case, is not a valid basis for releasing her from liability for the subject debt. It was Petitioner who signed the Note and accepted and agreed to the terms contained therein. "A third party's error or negligence does not normally relieve Petitioner of liability for the debt... Petitioner's obligation to pay the debt derives from the terms of the Note." Stephond West, HUDOA No. 17-AM-0026-AG-006 (March 14, 2018), *citing* Bryan McClees, HUDOA No. 17-AM-0037-AO-010 (February 14, 2018) and Cydine A. Taylor, HUDOA No. 14-AM-0063-AO-005 (October 22, 2014); also *see*, Judith Herrera, HUDOA No. 12-M-CH-AWG27 (July 12, 2012) (this Tribunal found that a statement to Petitioner by a title company that "all was okay...petitioner did not owe debt" was insufficient as evidence to prove that HUD debt had been paid).

Petitioner is primarily responsible for payment of the subject debt regardless of the actions or inactions of the primary mortgage lender herein, US Bank. For Petitioner not to be held liable, she must produce either a release in writing directly from HUD in which HUD explicitly states that Petitioner is relieved from her obligation to pay under the terms of the Note, or, in the absence of such proof, Petitioner must produce evidence of "valuable consideration accepted by the lender" of the subject debt (herein HUD) that indicates HUD's intent to release Petitioner. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Petitioner has failed to produce either in this case.


Case law precedent has 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). Consistent with case law precedent, the onus falls on Petitioner, not on US Bank, to prove that the subject debt has been paid. Consequently, in the absence of such evidence, this Tribunal must find Petitioner is responsible for payment of the subject debt.

Next, Petitioner argues in her *Statement* that “I cannot afford to have my wages garnished. If they believe I still owe this after reviewing said documents, please contact me by mail so I can set up a payment arrangement, not a garnishment please. Thank you.” This Tribunal is not authorized to negotiate, extend, recommend, or accept any repayment plan on behalf of the Department. Petitioner may wish to discuss this matter with Counsel for the Secretary or the Director of HUD’s Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Should Petitioner’s financial concerns persist, she may also request a review of her 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 August 21, 2023 to the U.S. Department of the Treasury for administrative wage garnishment is hereby **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

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**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.*).