

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

In the Matter of:

Kristen Brimley,

Petitioner.

24-VH-0034-AG-027

721020022

July 26, 2024

DECISION AND ORDER

On November 15, 2023, Kristen Brimley (“Petitioner”) filed a *Request for Hearing* (“*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 “the 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 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 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(f)(4), on November 17, 2023, this Court stayed the issuance of a wage garnishment order until this final written decision was issued. On December 18, 2023, the Secretary filed her *Statement* along with documentation in support of her position. On January 26, 2024, the Petitioner filed documentary evidence in support of her position. Petitioner filed additional evidence on January 31, 2024. 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 § 3720D because of a defaulted loan that was insured against non-payment by the Secretary.

Petitioner and co-borrower Kenneth R. Callier, executed and delivered to HUD a Promissory Note (the "Note") in the principal amount of \$37,205.29 on October 16, 2021. The Note was made in favor of the Secretary after HUD advanced funds to Petitioner's FHA-insured first mortgage lender. Pursuant to the terms of the Note, Petitioner was required to immediately pay the full unpaid balance when the first of several specific events occurred. One such event identified in the Note is Petitioner's payment in full of the primary note and related mortgage held by Petitioner's first mortgage lender.

On December 20, 2021, the FHA Insurance on Petitioner's primary mortgage was terminated after the lender indicated that the primary mortgage was paid in full. However, Petitioner failed to make payment on the Note at the place and in the amount specified. Consequently, Petitioner's debt to HUD is delinquent. Petitioner is justly indebted to the Secretary in the following amounts.

- (a) \$37,205.29 as the unpaid principal balance as of November 30, 2023;
- (b) \$340.89 as the unpaid interest on the principal balance at 1% per annum through November 30, 2023; and
- (c) \$1,263.59 as the unpaid penalties and administrative costs as of November 30, 2023; and
- (d) interest on said principal balance from December 1, 2023, at 1% per annum until paid.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated July 5, 2023, was sent to Petitioner's last known address. 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.

Petitioner provided a copy of her biweekly pay statement ending on November 22, 2023. Based on the statement, the Secretary determined that Petitioner's biweekly disposable pay equals \$2,104.09, and proposes a wage garnishment at 15% of Petitioner's disposable pay or \$315.61 biweekly.

DISCUSSION

Petitioner claims that her ex-husband and co-borrower, Mr. Callier, is solely responsible for the subject debt because he was the only person who requested and benefited from the loan. Petitioner offers as evidence copies of a Divorce Decree and a notarized letter in which Petitioner alleges her ex-spouse acknowledges full responsibility for payment of the subject debt.

According to the record, the Note signed by Petitioner and her ex-spouse clearly states that "the [l]ender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note." Co-signers of a Note are jointly and severally liable to the obligation to pay a Note and, as a result, "a creditor may sue the parties to such obligation separately or

together.” Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). Beyond Petitioner’s allegation that her ex-spouse was the only person who requested or benefitted from the loan proceeds, there is no record of Petitioner objecting or initiating an investigation for failure to receive loan proceeds so her obligation to repay the loan stands. The Note was signed by both parties, so the presumption is that both parties received the benefits of the loan proceeds. See e.g. Mary Jolivette, HUDOHA No. 18-VH-0133-AO-039 (February 25, 2019) (citing Tex. Bus. & Com. Code § 4.406, the Court held that because Petitioner received the benefit of the proceeds from the loans upon execution of the Notes, her receipt of the loan proceeds constituted ratification of the alleged unauthorized signature); Donna Isakson, HUDBCA No. 87-1883-G216 (March 31, 1987) (held notwithstanding the fact that the loan proceeds were apparently not used for their intended purpose, Petitioner has accepted the benefits of the loan and thus is responsible for repayment of the same.) Hence, without evidence to the contrary, HUD as the creditor may proceed against each co-signer for the full amount of the debt since each co-signer is jointly and severally responsible for the debt based on the terms of the Note herein. See Hedieh Rezai, HUDBCA No. 04-A-NYEE016 (May 10, 2004).

In this case, Petitioner first claims that because her ex-spouse agreed to payment of the subject debt in the Divorce Decree and then signed a notarized letter that, in effect, verified the same, she should be released from her responsibility for the subject debt. That is simply not the case. HUD’s right to collect the subject debt emanates from the terms of the Note, not from the terms of a Divorce Decree or a notarized letter between Petitioner and her ex-spouse. See Bruce R. Smith, HUDBCA No. 07-ACHAWG11 (June 22, 2007). These documents do not impact the rights of HUD as the lender because HUD was not a party to those proceedings or the subject of the notarized letter. See Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003) (citing Wendy Kath, HUDBCA No. 89-4518-L8, at 2 (December 26, 1989)). More specifically, the language referenced by Petitioner in the Divorce Decree only indicates her ex-spouse’s agreement to indemnify Petitioner and hold her harmless for debts that are solely in the name of her ex-spouse. That indemnification language has no impact whatsoever on the terms of the Note. Therefore, the Court finds that Petitioner is responsible for payment of the subject debt in the amount so claimed by the Secretary.

Next, Petitioner, who has already been twice garnished, also claims that the proposed garnishment amount is creating a financial hardship. In a claim of hardship under 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of showing by a preponderance of evidence that hardship exists.

To satisfy this burden, Petitioner must “submit ‘particularized evidence,’ including proofs of payment, showing that [s]he will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation.” Ray J. Jones, HUDAJF 84-1-OA at 2 (Mar. 27, 1985). In this case, Petitioner offers as evidence a copy of her paycheck and an Acknowledgement and Consent to Guardianship for both of her brothers. Petitioner did not however substantiate her claim by providing a Debt Resolution Financial Statement or other additional documentary evidence as previously ordered by the Court.¹ Without such evidence, the Court is unable to assess

¹ The Notice of Docketing issued on November 17, 2023, specifically explained that a financial hardship claim requires proof such as payment of mortgages, rent, groceries, medical bills or other receipts showing payment of necessary household expenses.

the credibility of Petitioner's financial hardship claim. This Court has established that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is ... unenforceable." Michael Bridges, HUDOA No. 21-VH-0092-AG-053 (October 28, 2022) (*citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). So, in the absence of such evidence, the Court must find that Petitioner's claim of hardship fails for lack of sufficient proof.


Should the Petitioner's financial circumstances persist, she may possibly consider requesting a review of her financial status by submitting a Title I Financial Statement (HUD Form 56142) to the Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, at 1-800-669-5152, extension 2859.

ORDER

Based on the foregoing, Petitioner remains obligated to pay the subject debt in the amount so claimed by the Secretary.

The *Order* imposing the stay of referral of this matter to the U.S. Department of Treasury for an 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 in the amount of 15% of Petitioner's biweekly 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.*).