

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

In the Matter of:

Joy A. Torain,

Petitioner.

HUDOHA 13-VH-0120-AG-049
Claim No. 1165679 Oakwood 9249

October 18, 2013

DECISION AND ORDER

On May, 15, 2013, Petitioner Joy A. Torain ("Petitioner") requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Housing and Urban Development ("HUD"). 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.

Applicable Law

The administrative judges of this Court have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by the debtor. 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. 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 15, 2013, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. *See Notice of Docketing, Order, and Stay of Referral, (Notice of Docketing)*, at p. 2. On June, 11 2013, the Secretary filed his statement with documentation in support of his position. On July 8, 2013, Petitioner filed documentation in support of her position. An *Order to Show Cause* was issued on July, 30 2013. This case is now ripe for review.

Findings of Fact

On March 21, 1997, Petitioner executed and delivered a Manufactured Home Consumer Credit Document (Note) in North Carolina to Oakwood Mobile Homes, Inc. in the amount of \$22,238.40. *Secretary's Statement, (Sec'y. Stat.)*, dated June 11, 2013, ¶ 2. The Note was insured against non-payment by the Secretary, pursuant to the National Housing Act. *See* 12 U.S.C. § 1721(g); *Sec'y. Stat.*, ¶ 2. Contemporaneously, the Note was assigned to Oakwood Acceptance Corp. *Sec'y. Stat.*, ¶ 3. Oakwood Acceptance Corp. was defaulted as an insurer of

Mortgage Backed Securities (MBS) due to its failure to comply with the Government National Mortgage Association's MBS program requirements. *See Sec'y. Stat., Ex. A, Declaration of Leslie A. Meaux, (Meaux Decl.), ¶ 4.*¹ Upon default by Oakwood Acceptance Corp., all of its rights, title, and interest in Petitioner's loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Oakwood Acceptance Corp. and GNMA. *Sec'y. Stat., ¶ 4.* As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. *Sec'y. Stat., ¶ 6.*

The Secretary's attempts to collect the alleged debt have been unsuccessful. *See Sec'y. Stat. ¶ 7.* The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$17,573.09 as unpaid principal balance;
- (b) \$13,434.82 as the unpaid interest on the principal balance;
- (c) \$ 3,774.26 as the penalty; and
- (d) Interest, penalties, and administrative costs on the principal balance from June 6, 2013 until paid.

Sec'y. Stat., Ex. A, Meaux Decl., ¶ 1.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (Notice) was mailed to Petitioner on April 22, 2013. *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 under mutually agreeable terms. *Id.* at ¶ 9. To date, Petitioner has not entered into a written repayment agreement. *Id.*

Ginnie Mae proposes a wage garnishment of 10% of Petitioner's disposable pay, instead of the Federal Agency allowed amount of 15%. *Id.* at ¶ 9.

Discussion

In this case, Petitioner claims that the alleged debt does not exist because it was satisfied when Petitioner received the release of lien on the title. More specifically, Petitioner states:

Several years ago, I received a title in my name with the lien released by a representative for Oakwood Acceptance Corp. In the state (NC) that I live in 'No Title Can Be Issued To The Debtor Until The LIEN Has Been Satisfied.' Therefore all debts were collected and satisfied under NC law once that title was release[d] by the lien holder, and received and/or issued to the debt payee.

(Emphasis in original.)

¹ Leslie A. Meaux is the Acting Monitoring Director of the Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association ("Ginnie Mac") within the United States Department of Housing and Urban Development.

As support, Petitioner introduced into evidence copies of a Title Application from the North Carolina Division of Motor Vehicles with a purchase date of March 21, 1997; the Manufacturer's Certificate of Origin to a Mobile Home dated November 14, 1996; the Certificate of Title for the property that is the subject of the alleged debt; an Application for Removal of Lien from the Certificate of Title signed by Petitioner along with the Corrected or Substituted Title Application both dated October 4, 2010; and finally, a Title Certification certifying that the copy of the Certificate of Title of record is authentic.

The Secretary contends, on the other hand, that Petitioner's allegation is mistaken because the alleged debt was not satisfied in full when Petitioner received the release of lien on the title. *Sec'y. Stat.*, ¶ 10. According to the Secretary, "The release of lien on the title does not eliminate the outstanding debt, but instead it only release[s]the lien on the mobile home." *Sec'y. Stat.*, Ex. A, *Meaux Decl.*, ¶ 8. The Secretary submits as support a copy of the Note signed by Petitioner that shows that Petitioner not only agreed to pay in accordance with the terms of the Note, but Petitioner also agreed that upon default, she would pay any unpaid interest on the unpaid balance. *Sec'y. Stat.*, Ex. B, pp. 1, 4. In addition, the Secretary submitted a copy of a letter from Ofori Lender Services in which a representative of Ofori's Release Department stated "the Release of Lien on the Title does not eliminate your outstanding debt on your home." *Sec'y. Stat.*, Ex. C.

In the present case, the Secretary's right to collect the alleged debt emanates from the terms of the Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the subject debt, she must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or, (2) evidence of valid or valuable consideration paid to HUD to release Petitioner from her obligation. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518-H51 (January 27, 1988); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986).

The evidence presented by Petitioner does not fully persuade the Court that Petitioner was released from her legal obligation to pay the alleged debt because she received the release of lien on the title. Instead, the evidence presented by Petitioner only proves to the Court that Petitioner at different stages submitted applications for certain documentation related to her mobile home – such documentation included a Certificate of Title, a Removal of a Lien from the Certificate of Title, and a Corrected or Substituted Title. These documents failed to prove that the lien against the title had actually been released, and also failed to prove that, even if released, the subject debt would thus be rendered unenforceable.

In addition, none of the evidence presented by Petitioner – including the Title Certification certifying the authenticity of the Certificate of Title and the Manufacturer's Certificate of Origin – likewise proves that valuable consideration was paid to HUD in satisfaction of the alleged debt. This Office has consistently maintained that "[a]ssertions

without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, Petitioner’s claim fails for lack of sufficient evidence.

The Secretary has nonetheless met his burden of proof that the subject debt is past due and legally enforceable. Relying upon the terms of the Note, and based upon most of the evidence as presented, the Secretary has proven that Petitioner not only agreed to pay the alleged debt claimed to be owed, but Petitioner also agreed that upon default she would pay the remaining balance along with any unpaid interest. *Sec’y Stat.*, Ex. B, Note, p. 1.

While the Secretary claims that a letter from Ofori Lenders was issued to Petitioner that informed Petitioner that release of the lien on the title did not release Petitioner from the alleged debt, the copy of the letter provided by the Secretary for the Court’s review was undated and unaddressed. *Sec’y Stat.*, Ex. C. As such, the letter appeared to be just another generic letter from Ofori Lenders that may or may not have been actually issued to Petitioner at any time. The Court therefore finds that the copy of the letter as presented does not provide with certainty support for the Secretary’s position that Petitioner was aware of her legal obligation to pay the alleged debt, even after release of the lien on the title.

However, the remaining evidence presented by the Secretary –the Note bearing Petitioner’s signature and the Declaration from the Acting Monitoring Director of the Mortgage-Backed Securities Monitoring Division of Ginnie Mae – together provide sufficient and credible proof in support of the Secretary’s position. As a result, the Court finds that the Secretary has met his burden of proof that the alleged debt is past due and legally enforceable against Petitioner.

Without evidence presented by Petitioner to either refute or rebut the evidence presented by the Secretary, the Court finds that Petitioner has failed to meet her burden of proof due to lack of sufficient evidence. The Court further finds that Petitioner remains legally obligated to pay the alleged debt in the amount claimed by the Secretary.

ORDER

Based on the foregoing, 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 collection of this outstanding obligation by means of administrative wage garnishment in an amount equal to 10% of Petitioner’s disposable pay. It is

SO ORDERED.



Vanessa L. Hall
Administrative Judge