

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

In the Matter of:

JAMES M. KING,

Petitioner.

HUDOHA 13-VH-024-AG-9

Claim No. 52-0883319RL

February 25, 2013

DECISION AND ORDER

On October 18, 2012, Petitioner filed a request for hearing to contest a proposed administrative wage garnishment in relation to a debt allegedly owed to the U.S. Department of 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 collection of debts owed to the United States government.

Applicable Law

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). Petitioner, thereafter, 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 Background

Pursuant to 31 C.F.R. §285.11(f) (4), on October 19, 2012, 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 December 18, 2012, the Secretary filed his Statement along with documentation in support of his position. To date, Petitioner has failed to respond to the orders issued by the Court to submit the documentary evidence that was necessary to prove his claim. See Notice of Docketing, dated October 19, 2012; Order for Documentary Evidence, dated December 11, 2012; Order to Show Cause, dated January 4, 2013). Based on the documents in the record of this proceeding, this case is now ripe for review.

Background

On or about, October 18, 1989, Petitioner executed and delivered a Retail Installment Contract ("Note") for a manufactured home loan, which was subsequently assigned by the seller to HSA Mortgage Company ("HSA"). (Secretary's Statement, "Sec'y. Stat."), Ex. A.) HSA was formerly an approved issuer in the Ginnie Mae Mortgage-Backed Securities program (MBS). Ginnie Mae defaulted HSA as an issuer of MBS due to its failure to comply with Ginnie Mae MBS program requirements. *Id.* Therefore, all HSA rights and interests in Petitioner's loan were assigned to Ginnie Mae under the Guaranty Agreement entered into by HSA and Ginnie Mae. *Id.* Ginnie Mae is the holder of the Note. (*Id.*, Attachment, Declaration of Leslie A. Meaux, ("Meaux Decl."), dated November 14, 2012, ¶ 4.)

Petitioner is currently in default on the Note. The Secretary has made efforts to collect from the Petitioner but has been unsuccessful. Petitioner is indebted to HUD as follows:

- (a) \$8,823.35 as the unpaid principal balance as of November 14, 2012; and
- (b) \$2,262.15 as the unpaid interest on the principal balance as of November 14, 2012;
- (c) \$1,118.08 as the unpaid penalties for administrative costs as of November 14, 2012; and
- (d) \$5,248.55 as the unpaid penalties as of November 14, 2012.

(Sec'y. Stat., ¶6; Meaux Decl., ¶6.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated October 15, 2012 was sent to Petitioner. (Sec'y. Stat., ¶ 7; Meaux Decl., ¶ 7.) In the Notice, Petitioner was afforded the opportunity to enter into a written repayment agreement but has not entered into any such agreement. (*Id.*) Ginnie Mae therefore proposes a wage garnishment of 10% of Petitioner's disposable pay, instead of the federal agency allowed amount of 15%.

Discussion

Here Petitioner claims he does not owe the alleged debt because the "[l]ien [had been] satisfied." (Request for Hearing ("Hr'g. Req.", filed October 18, 2012.) Petitioner further claims that because the lien on the property was released the alleged debt also was extinguished. *Id.* As support, Petitioner filed a letter from Ofori Lender Services dated October 5, 2010 in which it states that there were lien "release documents" enclosed. (*Id.*)

The Secretary alleges, however, that Petitioner remains indebted to the Government because he failed to satisfy his obligation under the Security Agreement signed on October 15, 1989. (Sec'y Stat., Ex. A.) The Secretary further states that the letter from Ofori Lender Services referenced by Petitioner did not act as a lien release document. Instead the Secretary alleges that the letter therein states, "[t]he release of the lien on the title does not eliminate your

outstanding debt on your home.” (Sec’y Stat., Ex. E.) As further support that the alleged debt remains enforceable against Petitioner, the Secretary provides additional documentary evidence that included copies of Petitioner’s Case Financial History related to the alleged debt, the original certificate of ownership of the property subject to the alleged debt, the release of the lien on the mobile home, a loan collections report from Ofori Lender Services that reflected Petitioner’s payments towards the alleged debt, a debtor’s notice to Petitioner from ACS Lender Services regarding the subject debt, and a memorandum showing proof of debt from a servicer for Ginnie Mae in which Petitioner was identified as a debtor in active status. (Sec’y. Stat., Exs. B, D, and F.)

After reviewing the evidence presented by both parties, the question remaining before the Court is whether Petitioner’s obligation to pay the alleged debt was extinguished when the lien on the manufactured home was released. In cases regarding transactions that take place in Texas, Texas law shall apply to the transaction upon the parties’ consent. See Duncan v. Cessna Aircraft Co., 665 S.W.2d 414, 421 (Tex. 1984); Tex. Bus. & Com. Code Ann. § 1.301(a). This is particularly true when the transaction bears a reasonable relation to a certain state, in this case Texas, and also when the record contains no evidence that indicates the parties intended otherwise. Id. Here, the governing state law is unambiguous because the Security Agreement bearing Petitioner’s signature itself contains a choice of law clause that provides that, “The law of the State of Texas shall govern this contract.” (Sec’y. Stat., Ex. A., Attached Sec. Agmt., Art. XIV.) Because the transaction occurred in Texas, and the parties intended for Texas law to apply, Texas law controls.

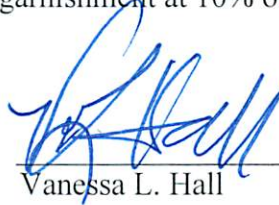
According to Texas law, releasing a lien on a home does not automatically discharge the underlying debt. It simply eliminates the security interest in the property and makes the creditor an unsecured creditor. In re Biggerstaff, 2004 WL 3209524 (Bkrtcy.N.D.Tex.), 52 Collier Bankr. Cas. 2d 576. In order to prove the creditor intended to extinguish the underlying debt when the lien on the property was removed, Petitioner must present documentary evidence that shows intent to remove both the lien and the underlying debt. Soto v. Vanderbilt Mortgage and Finance Inc., 2010 WL 5633291 (S.D.Tex. December 15, 2010). The evidence of intent in this case is apparent. A review of the letter from the Ofori Lender Services that Petitioner has referred to as the lien release document in no uncertain terms states that, “[t]he release of lien on the title *does not eliminate* your outstanding debt on your home. *Only the lien on the mobile home has been released.* The investor reserves any and all rights to collect on the outstanding balance *pursuant to your original contract* and signed personal promise to pay.” (Emphasis added) (H’rg. Req., Attachment; Sec’y Stat., Ex. E.) As a result, only the lien on the mobile home has been released and not Petitioner’s legal obligation to pay the alleged debt.

Based upon the limited evidence introduced by Petitioner the creditor intended to release only the lien on the manufactured home and not Petitioner’s obligation to pay the alleged debt. Without additional evidence from Petitioner to further substantiate his claim, there is no evidence in the record that sufficiently proves that the creditor intended to release Petitioner from payment of the alleged debt. Therefore, the Court finds that the debt that is the subject of this proceeding remains legally enforceable against Petitioner and further finds that his claim that the subject debt is not owed fails for lack of proof.

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**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at 10% of Petitioner's disposable pay.



Vanessa L. Hall
Administrative Judge