

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

In the Matter of:

COREY A. WAY,

Petitioner.

14-AM-0108-AG-046

721000316-OA

November 20, 2014

DECISION AND ORDER

On June 25, 2014, Corey Way (“Petitioner”) filed a *Hearing Request* concerning the amount, enforceability, or payment schedule of 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.

The Secretary of HUD has designated the administrative judges of this Office to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This case 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. On June 26, 2014, the Court issued a Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”) that stayed the issuance of a wage garnishment order until the issuance of this *Decision and Order*. (See 31 C.F.R. § 285.11(f)(4).)

Background

On or about July 3, 2000, Petitioner executed and delivered to the HUD Secretary a Subordinate Note (“Note”) in the amount of \$15,722.82. (Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed July 25, 2014.) In return, HUD advanced funds to Petitioner’s mortgage lender, thereby allowing Petitioner to avoid foreclosure on his home. (Sec’y Stat. ¶ 3; Ex. 1, Declaration of Gary Sautter¹ (“Sautter Decl.”), ¶ 4.) The Note included four scenarios, any one of which would make the debt immediately due and payable. (Sautter Decl., ¶ 4.) One of those scenarios was the payment in full of Petitioner’s primary mortgage. *Id.*

On or about September 23, 2002, the Secretary was informed that Petitioner’s primary mortgage had been paid in full. *Id.* On November 20, 2002, HUD sent Petitioner a demand letter seeking repayment under the Subordinate Note. (Sautter Decl., ¶ 5; Exhibit A. Demand

¹ Gary Sautter is the Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center.

Letter.) Petitioner contacted HUD about the debt after receiving the Demand letter, but no payment was made and no repayment agreement was entered into. (Sautter Decl., ¶ 6.)

The Secretary's attempts to collect this alleged debt from Petitioner have been unsuccessful. (Sec'y Stat., ¶ 6; Sautter Decl., ¶ 7.) The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- (a) \$15,722.82 as the unpaid principal balance as of July 7, 2014;
- (b) \$4,820.80 as the unpaid interest on the principal balance at 4% per annum through July 7, 2014;
- (c) \$3,203.79 as the unpaid penalties and administrative costs as of July 7, 2014; and
- (d) interest on said principal balance from July 8, 2014, at 4% per annum until paid.

(Sec'y Stat., ¶ 7; Sautter Decl., ¶ 7.)

On May 23, 2014, in accordance with 31 C.F.R. § 285.11(e), HUD sent Petitioner a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent"). (Sautter Decl., ¶ 8.) The Notice of Intent, sent to 10336 Veracruz Court, San Diego, CA 92124, was returned as "Unclaimed." (Sautter Decl., ¶ 8; Exhibit C.)

The Secretary has been unable to obtain a current pay statement from Petitioner. (Sec'y Stat., ¶ 15; Sautter Decl., ¶ 10.) Accordingly, the Secretary proposes a repayment schedule of \$700.00 per month, which will liquidate Petitioner's debt in approximately three years, as recommended by the Federal Claims Collection Standard, or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 16; Sautter Decl., ¶ 10.)

Discussion

The Secretary bears the initial burden of proof to show the existence and amount of the alleged 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). Petitioner may also present evidence that the terms of the 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.

As evidence of Petitioner's indebtedness, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note signed by Petitioner, the sworn declaration of the Acting Director of HUD's Asset Recovery Division, and a copy of the Subordinate Deed of Trust ("Deed"). (See Sec'y Stat., Ex. 2, Ex. 1, Ex. D.) Accordingly, the Court finds the Secretary has met his initial burden.

In response, Petitioner first states that collection of the debt is unenforceable because he did not receive proper notice of the impending garnishment, as required by 31 C.F.R. § 285.11(e). Specifically, Petitioner argues that the Notice of Intent was never successfully delivered. He implies that the Notice of Intent was delivered to the wrong address, and suggests that it may have been delivered to 10366 Veracruz Court erroneously. (Hearing Req., p. 4.) As

support, he recounts a conversation with a HUD employee who informed him that “the documents had originally been sent to the wrong address and were returned and then resent.” *Id.*² He also asserts that neither he nor his wife signed for any mail from HUD and were not informed that registered mail was waiting for them at the post office.

Petitioner’s arguments are unavailing. Notice is effective upon dispatch, provided the notice is properly and reasonably addressed to a recipient’s last known address. Kenneth Holden, HUDBCA No. 89-3781-K293 (June 6, 1989). There is no legal requirement to prove that Petitioner actually received the document. Here, the Notice of Intent was mailed to 10336 Veracruz Court, San Diego, CA 92124, not 10366. (Sec’y Stat., Ex. C.) The *Hearing Request* confirms that this is Petitioner’s current address. It is also the address this Court has used to communicate successfully with Petitioner throughout this proceeding. While it is unclear why the Notice of Intent was returned “Unclaimed,” I find that it was properly and reasonably addressed. Accordingly, the notice requirement has been satisfied for purposes of due process.

Next, Petitioner contends that the debt is unenforceable because the Deed was improperly recorded and thus did not appear on multiple title searches. (Hearing Req., p. 2; Petitioner’s Response to and Statement to Order for Documentary Evidence (“Pet’r’s Doc. Evid.”), filed September 12, 2014.) Petitioner argues that this is “a direct violation of the Secretary’s published policies and guidance letters” and is the sole reason the debt was not paid when Petitioner refinanced his home.³ (Pet’r’s Doc. Evid., pp. 1-2.) However, Petitioner fails to identify any HUD regulation or administrative guidance that creates a right of action for borrowers under the circumstances of this case.

The Secretary has admitted that the Deed was filed in Riverside County, California but should have been filed in San Diego County, California. As a result, a records search in San Diego County would not uncover the existence of the Deed. The Secretary asserts that this error has no bearing on the existence or enforceability of the alleged debt because “liability on the Note is not conditioned upon the recording of the subordinate mortgage.” (Secretary’s Response and Supplemental Statement (“Sec’y Supp. Stat.”), p. 1, filed November 11, 2014.)

This Court agrees with the Secretary. Petitioner became liable for the debt upon signing the Note, and is bound by the terms of the Note. There is no language in the Note limiting its enforceability according to the perfection of HUD’s security interest in the property underlying the Note. To the contrary, the Note states: “In return for a loan received from [HUD], Borrower promises to pay the principal sum of [\$15,722.82] to the order of [HUD].” (See Sec’y Stat., Ex. 2, ¶ 2.) HUD performed its duty under the Note; i.e., bringing Petitioner’s primary mortgage current to avoid foreclosure. Petitioner does not contend otherwise. Rather, he argues that, had he known about the continuing obligation, he would have paid the debt before accumulating

² There is some question precisely which documents Petitioner refers to. He states that he initially contacted HUD about a wage garnishment order issued against his wife. The documents in question may possibly be the notice of intent to garnish her wages, which he claims he never received. However, this case is not predicated on documents or the initiation of proceedings related to Petitioner’s wife.

³ Petitioner did not offer a legal theory explaining why an alleged violation of HUD’s policies or guidance letters would render collection of a debt unenforceable, and the Court is unaware of any such guidelines that would create a cause of action in favor of Petitioner under the circumstances of this case.

approximately \$8,000 in penalties, interest, and administrative costs. (Pet'r's Doc. Evid., p. 2.) He therefore requests that these additional costs be eliminated because they were the product of HUD's error.

While HUD's filing error may have compromised the perfection of HUD's security interest in Petitioner's property underlying the Note, this does not automatically create a legal windfall for Petitioner. At all relevant times, Petitioner was aware that he had signed the Note, and was legally obligated thereunder. He therefore knew the debt existed. Petitioner received HUD's Demand Letter in 2002, which stated that the Deed "was recorded as a lien against your property." (Sec'y Stat., Ex. A, p. 1.) The Demand Letter also informed Petitioner that, once collection procedures had been initiated, "additional fees such as legal fees or late charges will be incurred and will require repayment." Id. The burden was thus upon Petitioner to investigate the alleged outstanding debt. He states that because he "relied upon the Title Insurance Agent for correct information and never received any follow-up from either the Insurance Agent or the collection agency," he "believed it was safe to assume that the problem had been corrected." (Pet'r's Doc. Evid., p. 2.) That assumption, though perhaps understandable, was incorrect.

Petitioner also admits receiving "a few phone calls" in April 2014 from a HUD representative wishing to discuss the outstanding debt. Rather than investigate the calls, Petitioner dismissed them as a scam. Id. I find that Petitioner's disavowal of knowledge of the debt is ineffectual in distinguishing his liability under the Note, and does not relieve him of his obligation to repay it. I find that the debt remains valid, past due, and legally enforceable.

Having found that Petitioner remains liable for the debt, the Court lacks the authority to eliminate the accumulated interest, penalties, and administrative costs. This hearing is limited to determining the existence and amount of the debt. (31 C.F.R. § 285.11(f)(8).) Petitioner may wish to contact HUD's Financial Operations Center to discuss settlement or a repayment agreement as an alternative to wage garnishment. Additional information about these options is contained in the Notice of Intent.

Finally, Petitioner alleges that the proposed garnishment amount will create a financial hardship. However, he has provided insufficient documentary evidence to substantiate this position. The *Notice of Docketing* instructed Petitioner to provide this evidence on or before August 11, 2014. He did not do so. On August 27, 2014, the Court issued an *Order for Documentary Evidence* ("August 27 Order") ordering Petitioner to file the relevant evidence on or before September 15, 2014. The *August 27 Order* stated:

If Petitioner maintains that repayment of the alleged debt in this case would result in undue financial hardship, Petitioner may file evidence to prove such hardship. Any such proof must be in the form of documentary evidence and must consist of pay statements and proof of actual payment of necessary household expenses, e.g., receipts, bank statements, and copies of checks, money orders, etc., for payment of mortgage, rent, food, transportation, necessary medical expenses, and other basic household necessities. Petitioner may file an affidavit or

sworn declaration in support of Petitioner's legal arguments and evidence.

(August 27 Order, p. 1.)

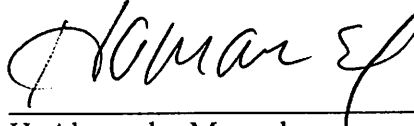
In *Petitioner's Documentary Evidence*, filed in response to the *August 27 Order*, he stated that evidence of hardship would be provided only if a repayment agreement was amended to exclude the additional costs and fees. (Pet'r's Doc. Evid., p. 2.) However, Petitioner failed to file that evidence. In the event Petitioner is able to file sufficient documentary evidence to prove hardship in the future, he is free to do so under the provisions of 31 C.F.R. §285.11(k). I, therefore, find that the Secretary's proposed repayment schedule would not result in undue financial hardship to Petitioner.

ORDER

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment that was issued on June 26, 2014 is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.

SO ORDERED.

A handwritten signature in black ink, appearing to read "H. Alexander Manuel", is written over a horizontal line.

H. Alexander Manuel
Administrative Judge