

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

In the Matter of:

GWENDOLYN S. WISLER

Petitioner.

15-AM-0021-AG-008

72-100050-10B

July 20, 2016

DECISION AND ORDER

On November 21, 2014, Gwendolyn S. Wisler (“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”). (Petitioner’s Hearing Request, dated November 21, 2014). The Debt Collection Improvement Act of 1996, as amended (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.

Background

On or about February 21, 2002, Petitioner executed and delivered to the Secretary a Subordinate Mortgage Note (“Note”) in the amount of \$3,620.00, in exchange for foreclosure relief. (Secretary’s Statement (“Sec’y Stat.”), ¶ 3, filed December 24, 2014; Ex. 2). The original Note was misplaced, lost, or destroyed, and has not been located. (Sec’y Stat., ¶ 3; Ex. 1-A). The Note specified events that would make the debt immediately due and payable. (Sec’y Stat., ¶ 4; Declaration of Brian Dillon (“Dillon Decl.”), ¶ 4). One of these events was the full payment of all amounts due under the primary note and related mortgage insured by the Secretary. *Id.*

On or about April 2, 2003, the Petitioner’s first mortgage was paid in full and the FHA mortgage insurance was terminated. *Id.* HUD has attempted to collect the amount due under the Note, but Petitioner remains delinquent. (Sec’y Stat., ¶ 5). As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a. \$3,597.17 as the unpaid principal balance as of November 30, 2014;
- b. \$263.78 as the unpaid interest on the principal balance at 4% per annum through November 30, 2014;
- c. \$4.52 as the unpaid penalties and administrative costs as of November 30, 2014; and

- d. interest on said principal balance from November 30, 2014, at 4% per annum until paid.

(Sec'y Stat., ¶ 7; Dillon Decl., ¶ 6).

On September 18, 2014, HUD sent a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings to Petitioner. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 7). Petitioner submitted to this Court a Full Reconveyance, dated April 26, 2003, which indicated that CitiMortgage, Inc./Verdugo Trustee Service Corporation satisfied a May 1, 1999 Deed of Trust. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 10). HUD's Deed is dated February 21, 2002 and was executed by Petitioner on March 5, 2002. *Id.* In a letter sent to HUD, dated July 15, 2015, Verdugo Trustee Service Corporation stated that it had determined that the mortgage lien on Petitioner's mortgaged property, which is the subject of the Note, had been "erroneously released". (Secretary's Response and Supplemental Statement, ¶ 7). The letter further stated that CitiMortgage had taken steps to have that lien reinstated. *Id.*

On September, 25, 2014, Petitioner entered into a Debt Resolution Program Repayment Agreement ("Repayment Agreement") with HUD for \$375.00 per month. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 8; Ex. 1-B). Based on the Repayment Agreement terms, Petitioner made one payment of \$375.00 on November 19, 2014. (Dillon Decl., ¶ 9). In accordance with the Repayment Agreement between HUD and Petitioner, the Secretary's proposed repayment schedule is \$375.00 per month. (Sec'y Stat., ¶ 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). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause financial hardship to Petitioner, or that the 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 Lost Note Affidavit, the Subordinate Deed of Trust signed by Petitioner and her husband, the Repayment Agreement signed by Petitioner, and the sworn declaration of Brian Dillon. (Sec'y Stat.; Ex. 1-A). Accordingly, the Court finds that the Secretary has met his initial burden of proof.

Petitioner does not deny signing the Repayment Agreement or the Deed of Trust in favor of the Secretary for the amount of \$3,620.00. (Petitioner's Hearing Request ("Hearing Request")). Petitioner contends, however, that the "erroneously released" letter issued by Verdugo Trustee Services on July 15, 2015 effectively released Petitioner from liability on the Note. (Secretary's Response and Supplemental Statement ("Sec'y Response"), ¶ 5, filed August 31, 2015). The Secretary counters by saying that Petitioner ratified the debt by executing the Note, receiving the benefits, entering into the repayment agreement, and then not repaying. *Id.* at

¶ 10. Moreover, the Secretary argues that the release of the Subordinate Deed of Trust did not release the debt owed to HUD. Id.

The Court agrees with the Secretary's argument that the erroneously issued release of the Subordinate Deed did not satisfy or extinguish Petitioner's obligation to pay HUD under the Note. See Joseph and Jacqueline Ragimierski, HUDOA No. 07-M-NY-HH53 (November 14, 2008). Petitioner misapprehends the import of Verdugo Trustee Service's mistaken release of HUD's deed of trust on the property located at 818 Armstrong Avenue, Santa Maria, CA. A release of HUD's security interest in property does not equate to a release of the underlying debt, itself.

On September 3, 2015, this Court provided Petitioner additional opportunities to file evidence in response to the Secretary's response and supplemental statement. (*Second Order for Documentary Evidence*, dated September 3, 2015). Petitioner failed to comply with that order. Petitioner offers no other evidence to support the claim that liability of the Note was extinguished by the release of the deed of trust. Petitioner, therefore, has not shown that the debt was repaid or properly released by HUD, *Joseph and Jacqueline Ragimierski*.

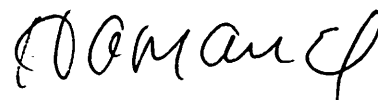
Accordingly, I find that notwithstanding HUD's inadvertent release of Petitioner's deed of trust by Verdugo Trustee Services, HUD's predecessor-in-interest, Petitioner's liability for the Note remains unaffected. In addition, Petitioner clearly accepted legal responsibility for the debt by accepting the monetary benefits under the Note, and therefore, ratified the debt. Petitioner has not presented any claims or evidence that the terms of the proposed repayment schedule are unlawful, that enforcement of the debt would cause financial hardship to Petitioner, or that the Note is legally unenforceable. The Court therefore finds that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

ORDER

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

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,



H. Alexander Manuel
Administrative Judge