

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

In the Matter of:

Jaclyn D. Hoskins

Petitioner.

HUDOHA 15-VH-0095-AG-29

Claim No. 721007315

August 1, 2016

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (“Hearing Request”) filed by Petitioner, Jaclyn D. Hoskins, on July 17, 2015 concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”).

Pursuant to 31 C.F.R. § 285.11(f)(4), on July 17, 2015, the 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”) at 2. On July 31, 2015, the Secretary filed his *Statement* along with documentation in support of his position. Petitioner filed documentary evidence along with her *Hearing Request*, but has failed to comply with the Court’s subsequent *Orders* to provide more sufficient evidence in support of her position. *Orders* dated September 14, 2015 and October 14, 2015. This case is now ripe for review.

JURISDICTION

The administrative judges of this Court have been designated to adjudicate contested cases in which 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.

BACKGROUND

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, as a result of a defaulted loan that was insured against non-payment by 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.

On January 16, 2004 Petitioner, along with her husband, executed a mortgage in favor of Wells Fargo. *Hearing Request; Sec’y. Stat.* ¶ 13. On or about April 10, 2008 Petitioner’s

mortgage, which was insured against nonpayment by the Secretary, was in jeopardy of foreclosure. *Id.* ¶ 2; *Ex. A, Declaration of Kathleen M. Porter*¹ (“*Porter Declaration*”) ¶ 4. In order to provide foreclosure relief to Petitioner, HUD advanced funds to Petitioner’s lender to bring the primary note current. *Id.* In exchange, on April 16, 2008, Petitioner executed a *Partial Claims Promissory Note* (“*Note*”) in the amount of \$3,856.90 in favor of the Secretary. *Ex. A, Note*. The *Note* provides, in relevant part, that the amount shall be due when “Borrower has paid in full all amounts due under the primary *Note* and related mortgage, deed of trust of similar Security Instruments insured by the Secretary.” *Note* ¶ 3 (A) (i).

On or about August 1, 2011, the FHA insurance on the primary mortgage was terminated, as the lender indicated the mortgage was paid in full. *Porter Decl.* ¶ 4; *Hearing Request*. At this time the amount promised in the separate *Note* held by the Secretary became due pursuant to the terms of the *Note* itself. *Note* ¶ 4 (A) (i) & (3). Petitioner has failed to make payment on the *Note* at the place and in the amount specified, making Petitioner’s debt delinquent. *Sec’y. Stat.* ¶ 8; *Porter Decl.* ¶ 5. The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. *Sec’y. Stat.*, ¶ 9; *Porter Decl.* ¶ 5. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$3,856.90 as the unpaid principle balance as of June 30, 2015;
- b) \$141.24 as the unpaid interest on the principal balance at 1% per annum through June 30, 2015;
- c) \$1,369.54 as unpaid penalties and administrative costs through June 30, 2015; and
- d) interest on said principal balance from July 1, 2015 at 1% per annum until paid.

Sec’y Stat., ¶ 9; *Porter Decl.* ¶ 5.

Pursuant to 31 C.F.R. §285.11 (e), on October 27, 2014 a Notice of intent to Initiate Administrative Wage Garnishment Proceedings (“*Notice*”) was sent to Petitioner. *Sec’y. Stat.*, ¶ 10; *Porter Decl.*, ¶ 6. In accordance with 31 C.F.R. 285.11 (e) (2) (ii), Petitioner was afforded an opportunity to enter into a written repayment agreement. *Sec’y. Stat.* ¶ 11. Petitioner did not enter into a repayment agreement or pay the debt in full in response to the *Notice*. *Id.*

HUD attempted to obtain a copy of Petitioner’s most recent pay statement. But to date, Petitioner has not provided a copy of her pay statement to HUD. *Sec’y. Stat.* ¶ 17; *Porter Decl.* ¶ 9. Since current garnishment amounts vary, the Secretary’s proposed repayment plan conforms with the amounts recommended by the Federal Claims Collection Standards, or 15% of Petitioner’s disposable pay. *Sec’y. Stat.* ¶ 17; *Porter Decl.* ¶ 9.

DISCUSSION

In Petitioner’s *Request for Hearing*, she disputes the existence of the debt based on the premise that the subject debt was paid when the primary mortgage was satisfied. As support, Petitioner introduced into evidence copies of documents and emails purporting to show that she “Paid off [her] only mortgage company Wells Fargo,” and that “the debt stated by the U.S. Dept

¹ Kathleen M. Porter is the Acting Director of the Asset Recovery Division of HUD’s financial operations center.

of Treasury is NOT owed by myself or my husband Joel Hoskins.” (emphasis added) *Hearing Request* at 2,3. Petitioner further states that “When we refinanced Wells Fargo Home Mortgage explained to us that they would be paying any money due from their payoff amount to US Dept of HUD/Treasury.” *Hearing Request* at 1. Based on this explanation, Petitioner understood that she was released from her obligations under the Note once the primary mortgage was satisfied. *Hearing Request*, Attached Letter dated October 21, 2014 and Attached Settlement Statement dated July 27, 2011.

In response the Secretary alleges that Petitioner’s debt is past due and legally enforceable and, as a result, the Secretary seeks authorization to collect the subject debt under his proposed repayment schedule for Petitioner. In support of his position, the Secretary produced copies of the Note signed by Petitioner and a sworn declaration from the Acting Director of HUD’s Asset Recovery Division. *See Sec’y Stat.*, Ex. A, *Note*; Ex. B *Porter Declaration*. It is evident, based on the terms of the Note, that Petitioner “promise[d] to pay the principal sum of Three Thousand Eight Hundred Fifty- Six and 90/100 dollars (\$3856.90) to the order of [the Secretary of Housing and Urban Development]. Due and payable... [when] Borrower has paid in full all amounts due under the primary Note and related mortgage.” *Note* ¶ 2,3. Moreover, the sworn declaration of the Acting Director further substantiates that the debt amount owed by Petitioner is due and payable. The evidence introduced by the Secretary is credible and has not, to date, been refuted or rebutted by Petitioner.

Upon reviewing the documentation provided, there is no indication that the subject debt was ever satisfied, especially based upon the terms of the Note. The *Settlement Statement* upon which Petitioner relies specifically states in sections H and J that there was only a “payoff to WELLS FARGO HOME MORTGAGE 0037388,” at “650-A North Ferdon Blvd, Crestview, Florida 32536.” Whereas the *Note* mandates that the debt be settled with HUD at U.S. Department of HUD C/O C&L Service Corporation Morris Griffin Corporation 2488 E. 81st St., Ste. 700, Tulsa, OK 74137. *Hearing Request*, Attachment; *Note* ¶ 3. The *Settlement Statement* only proves that the primary mortgage was satisfied, but does not prove that the subject debt was satisfied. According to the terms of the Note, upon satisfaction of the primary mortgage, the subject debt is however immediately due and payable. Such is the case with Petitioner. As a result, Petitioner’s contractual obligation to pay the debt owed to HUD remained intact after the primary mortgage was satisfied.

“For Petitioner not to be held liable for the full amount of the debt, there must either be a release in writing from the lender specifically discharging Petitioner’s obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release.” Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986). Herein, Petitioner has failed to produce sufficient evidence to prove that she has been released from her contractual obligation, and likewise has failed to provide valuable consideration for release from the same. Without such evidence, the Court is unable to make a determination whether Petitioner’s claim has merit, or is merely an allegation without sufficient proof. This Court 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). So, the Court finds here that Petitioner's claim fails for lack of proof.

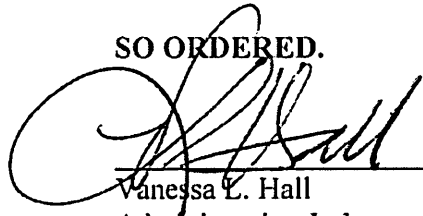
Additionally, this Court has previously held that repossession of a debtor's home does not relieve the debtor of an obligation to pay the remaining balance of a loan. See Elnora Brevard, HUDBCA No. 07-H-NY-AWG43, (January 17, 2008), citing Marie O. Gaylor, HUDBCA No. 03-D-NY-AWG04 (February 7, 2003); See also, Theresa Russell, HUDBCA No. 87-2776-H301 (March 24, 1988). Petitioner became legally obligated to pay the debt when she signed the Note, but to date has not proven that she has otherwise been released from such obligation. Therefore, the Court finds that Petitioner owes the debt in the amount so 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 15% of Petitioner's monthly disposable income.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.