

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

In the Matter of:

PABLO ROSAS,

Petitioner.

16-VH-0067-AG-026

1500355802A

June 19, 2017

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hearing Request*.”) filed by Pablo Rosas (“Petitioner”), on March 25, 2016, concerning the proposed wage garnishment for a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “Secretary”).

Pursuant to 31 C.F.R. § 285.11(f)(4), on March 25, 2016, the Court stayed the issuance of an administrative wage garnishment order due to Petitioner until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”). Petitioner submitted, along with his *Hearing Request*, evidence in support of his position. On April 5, 2016, the Secretary, through Counsel, filed his *Statement* and documentary evidence in support of his position. This case is now ripe for review.

JURISDICTION

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 under 24 C.F.R. §17.81 and 24 C.F.R. part 26, subpart A. Pursuant to 31 C.F.R. § 285.11, as authorized by 24 C.F.R. §17.81, such hearing shall be conducted to determine, by a preponderance of the evidence, whether the alleged debt is past due and legally enforceable.

BACKGROUND

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A because 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. § 3720A), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts allegedly owed to the United States government.

As a means of providing Petitioner foreclosure relief, HUD advanced funds to Petitioner’s FHA insured mortgage lender to bring Petitioner’s primary mortgage current. *Secretary’s Statement* (“*Sec’y. Stat.*”), ¶ 3, filed April 5, 2016. In exchange, on March 11, 2014, Petitioner

executed and delivered a Partial Claims Promissory Note (“Note”) in the amount \$14,646.21. *Sec’y. Stat.*, ¶ 4. The Note secured a subordinate debt held by the Secretary. *Id.*

Pursuant to the terms of the Note, in pertinent part, payment becomes due and owing when the primary note has been paid in full, or when the primary note and related mortgage, deed of trust, or similar security instrument, are no longer insured by the Secretary. *Sec’y. Stat.*, ¶ 5. On or about November 10, 2014, the FHA mortgage insurance of Petitioner’s primary note was terminated because the lender indicated the primary note was paid in full. *Sec’y. Stat.*, ¶ 6; *Dillon Decl.*, ¶ 4.

HUD has attempted to collect on the amount due under the Note, but Petitioner remains delinquent. *Sec’y. Stat.*, ¶ 9; *Dillon Decl.* ¶ 5. As a result, Petitioner is indebted to the Secretary in the following amounts:

- a) \$12,897.25 as the unpaid principal balance as of February 28, 2016;
- b) \$64.44 as the unpaid interest on the principal balance at 4% per annum through February 28, 2016;
- c) \$811.74 as the unpaid penalties and administrative costs in the amount of as of February 28, 2016; and
- d) interest on said principal balance from February 29, 2016 at 1% per annum until paid.

Sec’y. Stat., ¶ 9; *Dillon Decl.*, ¶ 5.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated February 29, 2016, was sent to Petitioner at “912 Cooks Court.” *Sec’y. Stat.*, ¶ 10; *Dillon Decl.*, ¶ 6; *Notice*. The Notice stated that Petitioner had the opportunity to enter a written repayment agreement under the terms agreeable to HUD. However, as of February 28, 2016, Petitioner and HUD had not entered into such an agreement. *Sec’y. Stat.*, ¶ 11; *Dillon Decl.*, ¶ 7.

DISCUSSION

On appeal, Petitioner alleges that the subject debt does not exist because it was paid in full when he paid off his primary mortgage to Wells Fargo Home Mortgage. Petitioner introduced into evidence a copy of a letter from Wells Fargo Home Mortgage that indicated the primary mortgage loan, not the Note, was paid in full. Beyond submission of the Wells Fargo letter, there is no record of evidence that supports Petitioner’s claim that the Note was also paid in full.

The Secretary contends, on the other hand, that the “FHA insurance on Petitioner’s Note was terminated, as the lender indicated the primary note and mortgage was paid in full.” *Sec’y. Stat.*, ¶ 6. Upon termination, the amount alleged became due and payable yet was not paid by Petitioner. *Id.* The Secretary introduced into evidence copies of an affidavit from the Acting Director of HUD’s Asset Recovery Division and a copy of the Note bearing Petitioner’s signature, in which Petitioner agreed to pay the subject debt should such Note become due.

For Petitioner to prove that a debt owed to the Secretary has been satisfied, there must be a written release from HUD or evidence of valuable consideration accepted by HUD from Petitioner. See Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). This Court has maintained that “[i]f satisfaction of a senior deed of trust prevents a junior trust holder from enforcing a junior trust deed on the same real property, the junior trust holder may collect the debt, now unsecured, by initiating collection efforts based on the obligations in the loan note.” Mitchell and Rosalva Fraijo, HUDBCA No. 99-C-CH-Y200 at 3 (March 20, 2000); John Bilotta, HUDBCA No. 99-A-CH-Y258 (December 29, 1999) (citing Kimberly S. (King) Thede, HUDBCA No. 89-4587-L74 (April 23, 1990)).

In the Note, specific instructions were provided to Petitioner on how and where the final payment of the Note should be made. Such terms were unambiguous. By the terms of the Note, the debt obligation herein became due once Petitioner’s FHA insured primary mortgage was paid in full. In this case, the primary mortgage was satisfied on November 10, 2014 so accordingly the debt associated with the Note immediately became due. The funds advanced to Wells Fargo by HUD on Petitioner’s behalf constituted satisfaction of a separate debt obligation that Petitioner owed to HUD. The letter Petitioner submitted does not, alone, serve as proof of Petitioner’s release from the debt obligation in this case, or proof that HUD accepted valuable consideration from the Petitioner for the same. Id.

Because the Court has consistently maintained that “assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable,” the Court shall again make the same determination herein. Troy Williams, HUDOA No. 09-M-CH0A WG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Without a record of evidence from Petitioner to rebut or refute the claims of the Secretary, the Court finds that Petitioner’s claim fails for lack of sufficient proof.

Finally, Rule 26.4(c) of Title 24 of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*. (Emphasis added).

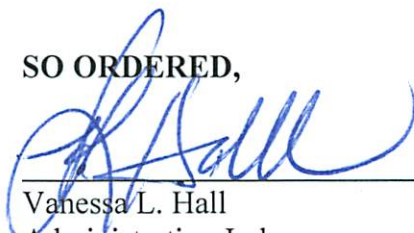
According to the record, Petitioner has repeatedly failed to comply with the *Orders* issued by this Court to produce evidence that would prove the subject debt was paid in full. Petitioner not only failed to comply with the *Notice of Docketing*, but again failed to comply with *Orders* subsequently issued by the Court on June 13, 2016 and July 22, 2016. So, consistent with Rule 26.4(c) of Title 24 of the Code of Federal Regulation, the Court also has determined to dispose of this hearing against Petitioner as the noncomplying party.

ORDER

Based on the foregoing, this Court finds that Petitioner’s debt is past due and legally enforceable. It is hereby

ORDERED that 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 disposable pay.

SO ORDERED,



Vanessa L. Hall
Administrative Judge