

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

In the Matter of:

Kathy Musgrove,

Petitioner.

HUDBCA 16-VH-0070-AG-028  
Claim No. 780779382

April 6, 2017

**DECISION AND ORDER**

This case is before the Office of Hearings and Appeals upon a *Request for Hearing (Hearing Request)* filed by Petitioner, Kathy Musgrove, on March 29, 2016 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 March 30, 2016, 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 May 2, 2016, the Secretary filed his *Statement* along with documentation in support of his position. Petitioner, on June 21, 2016, filed documentary evidence in support of her claim of financial hardship. 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. 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 or about March 20, 2009, Petitioner executed and delivered to Vanderbilt Mortgage and Finance, Inc., a Retail Installment Contract-Security Agreement ("Note") in the amount of \$54,610.10, in exchange for a Title I insured manufactured home loan. The Note secured a subordinate mortgage held by the Secretary. *Sec'y's Stat.* ¶ 2; Note. The Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. *Sec'y's Stat.* ¶ 3; Ex. 2, *Declaration of Gary Sautter (Sautter Decl.)* ¶ 2.

Petitioner failed to make payments as agreed in the Note, and the Note went into default. As a result of the default, Petitioner's manufactured home was repossessed and sold in accordance with HUD Handbook 1060.2 Rev. 6, 201.53. *Sec'y's Stat.*, ¶ 4; Ex. 2, *Sautter Decl.* ¶¶ 3, 6, and 7. Vanderbilt Mortgage and Finance, Inc. assigned the defaulted Note to HUD pursuant to the Title I insurance program. *Id.*

HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. Ex. 2, ¶ 4. Petitioner is indebted to HUD in the following amounts:

- (a) \$32,080.63 as the unpaid principal balance as of March 31, 2016;
- (b) \$1,036.29 as the unpaid interest on the principal balance at 1% per annum through March 31, 2016;
- (c) \$2,020.74 as the unpaid penalties and administrative costs as of March 31, 2016; and
- (d) interest on said principal balance from April 1, 2016, at 1% per annum until paid.

*Sec'y's Stat.*, ¶ 6; *Sautter Decl.*, Ex. 2, ¶ 4.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent"), dated January 20, 2016, was sent to Petitioner. *Sautter Decl.*, Ex. 2, ¶¶ 4, 5. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement of the debt under terms agreeable to HUD and to avoid Administrative Wage Garnishment. *Sautter Decl.*, Ex. 2, ¶¶ 4, 5. Ex. 2, ¶ 6. Petitioner did not enter into a written repayment agreement or pay the debt in full in response to the Notice.

The Secretary proposes a repayment schedule of \$991.17 per month, which will liquidate the debt in approximately three years; or alternatively, monthly repayment equal to 15% of Petitioner's disposable income. *Sautter Decl.*, Ex. 2, ¶ 7.

### Discussion

Petitioner disputes the existence and enforceability of the alleged debt. Petitioner first contends that she should not be held responsible for the alleged debt associated with the payment of a trailer no longer in her possession, and second, that the proposed repayment schedule would create a financial hardship for her. *Petitioner's Hearing Request (Pet'r's Hr'g Req.)*, filed Mar. 29, 2016. According to Petitioner, "I do not feel I should have to pay for a trailer that was taking [taken] from me with the [under]standing if I turn over the keys and clean the trailer I was finish[ed] with it... I just can't afford that kind of money for something I'm not living in... trying to find a place to live and take care of four kids." *Id.* However, the record does not show that Petitioner submitted any evidence in support of her claim.

This Court has consistently maintained that repossession of a debtor's home does not relieve the debtor of an obligation to pay the remaining balance on a loan. In short, repossession of the collateral by the lender does not relieve a debtor of liability. *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 contractually obligated to pay the debt when Petitioner signed the Note.

In order for Petitioner not to be held responsible for the alleged debt, there must either be a release in writing from the lender that specifically discharges Petitioner's obligation, or evidence of valuable consideration accepted by the lender from Petitioner that would indicate 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). Petitioner has failed to produce a written release, or proof of valuable consideration as a result of foreclosure. Therefore, the Court finds that Petitioner is still obligated to pay the debt that is the subject of this proceeding.

In response, the Secretary claims the alleged debt is enforceable because Petitioner has failed to introduce a proof of release or payment of consideration that proves otherwise. *Sec'y. Stat.* §§11,12. As support, the Secretary submitted for the Court's review copies of sworn testimony of the Acting Director of HUD'S Asset Recovery Division, and of the subject Note bearing Petitioner's signature promising to

repay the Note. *Sec'y Stat.*, Ex. 1. The record of evidence needed to refute or rebut the claim of the Secretary against Petitioner is sorely lacking. Without such evidence, the Court is unable to assess the weight or credibility of Petitioner's argument. Therefore, the Court finds that Petitioner claim fails for lack of proof.

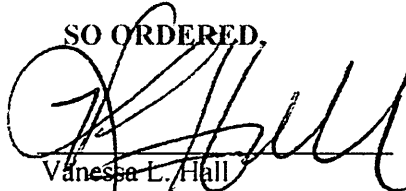
Petitioner next contends that the proposed administrative wage garnishment would result in financial hardship. More specifically, Petitioner claims that she "can't afford that kind of money..." *Petr's Hrg. Req.* While Petitioner provided a list of her monthly expenses for the Court's review, she failed to produce the additional proofs of payment to verify her listed expenses and help the Court to better assess her financial state. In the absence of credible evidence that would substantiate Petitioner's claimed expenses, the Court is again unable to determine whether the proposed repayment schedule would create a financial hardship. Therefore, the Court again finds that Petitioner owes the debt amount 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 of \$991.17, or alternatively, in a monthly repayment amount equal to 15% of Petitioner's disposable pay.

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 upon a showing of good cause.