

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

In the Matter of:

Jerry Powell,

Petitioner.

16-VH-0130-AG-035

72-1008507

August 14, 2017

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hr’g. Req.*”) filed by Jerry Powell (“Petitioner”) on August 19, 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 24 C.F.R. § 17.81(a), on August 23, 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*”). On August 31, 2016, the Secretary filed a *Secretary’s Statement*, which included documentation in support of his position. *Secretary’s Statement* (“*Sec’y. Statement*”). On January 27, 2017, the Court filed an *Amended Order to Show Cause (Amended Order)* requiring Petitioner to file documentary evidence on or before February 21, 2017, proving that all or part of the subject debt is not past due or legally enforceable. To date, Petitioner has not filed this documentary evidence with the Court. This case is now ripe for review.

JURISDICTION

The Office of Hearings and Appeals has jurisdiction to determine whether Petitioner’s debt is past due and legally enforceable pursuant to 24 C.F.R. §§ 17.61 *et seq.* The administrative judges of this Court, in accordance with the procedures set forth in 24 C.F.R. §§ 17.69 and 17.73, have been designated to conduct a hearing 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.

The HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Sec'y Stat.*, ¶ 2; *Declaration of Brian Dillon*¹ ("*Dillon Decl.*"), ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Id.* In exchange for foreclosure relief, on May 8, 2014, Petitioner executed and delivered a Partial Claim Promissory Note ("Note") to the Secretary in the amount of \$2,320.22. *Sec'y. Stat.*, ¶ 4. Paragraph 4(A) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. *Sec'y. Stat.*, ¶ 5; Ex. B, *Note*, at ¶ 4(A)(i).

On or about September 5, 2014, the primary note and mortgage was paid in full, and the FHA mortgage insurance on the primary note was terminated. *Sec'y. Stat.*, ¶ 6; *Dillon Decl.*, ¶ 4. Because the primary note and mortgage was paid in full, and the FHA mortgage insurance was terminated, Petitioner was to make payment to HUD on the *Note* at the "Office of Housing-FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street SW, Washington, DC 20410 or any such other place as [HUD] agrees in writing...." *Sec'y. Stat.* ¶7; *Note* at ¶ 4(B).

HUD's attempts to collect this alleged debt from Petitioner have been unsuccessful. *Sec'y. Stat.*, ¶ 5; *Dillon Decl.*, ¶¶ 5,6, and 7. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$2,320.22 as the unpaid principal balance as of August 31, 2016;
- b) \$5.66 as the unpaid interest on the principal balance at 1 % per annum through August 31, 2016; and
- c) interest on said principal balance from September 1, 2016 at 1% per annum until paid.

Sec'y. Statement, ¶ 9; *Dillon Decl.*, ¶ 5.

On July 27, 2016, a *Notice of Intent to Collect by Administrative Wage Garnishment Proceedings* ("*Notice*") was mailed to Petitioner. *Sec'y. Statement*, ¶ 10; *Dillon Decl.*, ¶ 6. Petitioner was afforded the opportunity to enter a written repayment agreement with HUD under mutually agreeable terms, but he declined to do so. The Secretary proposes a repayment schedule of \$65 per month.

Discussion

Petitioner disputes that this debt is past due or legally enforceable. In his *Hearing Request*, Petitioner claimed that he "paid off mortgage...in full amount \$72,986.27 thru Fifth and Third Bank." Petitioner also asserted in his *Hearing Request* that "I do not owe the debt."

¹ Brian Dillon is the Director of the Asset Recovery Division of HUD's Financial Operations Center.

The Secretary contends, however, that the full payments of the subject debt was never received and that Petitioner remains contractually obligated to pay the debt so claimed. The Secretary further contends that “the FHA mortgage insurance on the primary mortgage was terminated, as the lender indicated the primary note and mortgage was paid in full. *See Dillon Decl.*, ¶ 4. Upon termination, the amount alleged became due and payable yet was not paid by Petitioner. The Secretary introduced into evidence copies of an affidavit from the Acting Director of HUD’s Asset Recovery Division and of the subject *Note* bearing Petitioner’s signature. In the *Note*, Petitioner agreed to pay the alleged debt should there be a default. Also in the *Note* were specific instructions on how and where payments should be made to the Secretary, and those instructions were unambiguous.

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). The statements made in the *Hearing Request* do not prove that a debt owed to the Secretary has been satisfied or that HUD accepted valuable consideration from the Petitioner. *Id.* The *Note* executed to the Secretary constitutes a contractual obligation that is separate from Petitioner’s obligation to his primary mortgage lender. Petitioner’s claim that he does not owe this debt to HUD because he paid his primary mortgage obligation in full does not satisfy his separate debt obligation to HUD under the *Note*. This evidence, standing alone, proves to be insufficient as support for Petitioner’s argument.

The Court issued an *Amended Order to Show Cause* requiring Petitioner to file the necessary documentary evidence, on or before February 21, 2017, to prove that all or part of the subject debt is not past due or legally enforceable. To date, Petitioner again has failed to file documentary evidence to support his claims that this debt is not past due or unenforceable.

The Court has consistently maintained that “assertions without evidence are not sufficient to show that a debt claimed by the Secretary is not past due or unenforceable.” *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (HUDOA Jun. 23, 2009); 31 C.F.R. 285.11 (f)(8)(ii). Without sufficient evidence to refute or rebut the claims made by the Secretary, Petitioner remains indebted to HUD in the amount so claimed by the Secretary. Therefore, based on the record of evidence, the Court finds that Petitioner’s claim fails for lack of sufficient proof.

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. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment of \$65.00 per month, or 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 only upon a showing of good cause.