

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

In the Matter of:

**Catherine Coley,**

Petitioner.

16-VH-0147-AG-039

721008663

July 24, 2017

**DECISION AND ORDER**

On September 20, 2016, Catherine Coley, (“Petitioner”) filed a *Request for Hearing* (“Hearing Req.”) concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“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 owed to the United States Government.

**PROCEDURAL HISTORY**

Pursuant to 31 C.F.R. § 285.11(f)(4), on September 21, 2016, this Court stayed the issuance of a wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”). On September 30, 2016, the Secretary filed his *Statement (Sec’y Stat.)* along with documentation in support of his position.

Petitioner failed to timely file a response to this Court’s *Notice of Docketing*. Petitioner filed written statements in which she alleged that the subject debt was paid off, but such allegations were considered insufficient as proof that Petitioner was released from her contractual obligation to pay the subject debt. As a result, the Court subsequently ordered Petitioner, twice, to file sufficient documentary evidence showing that all or part of the subject debt is either not past due or is unenforceable. *Order for Documentary Evidence*, dated November 7, 2016; *Order to Show Cause*, dated January 9, 2017. Petitioner was also notified in both orders that failure to comply would result in sanctions pursuant to 24 C.F.R. § 26.4(c), including judgment being entered on behalf of the opposing party or a decision based on the documents in the record of the proceeding. *Id.* To date, Petitioner has failed to provide sufficient documentary evidence in support of her claim despite the Court ordering her to do so. The record is now considered complete. This case is 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. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Thereafter, Petitioner 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). In addition, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.*

## **BACKGROUND**

This debt resulted either from a defaulted loan which was insured against non-payment by the Secretary, from an overpayment by HUD, from delinquent rent payments due to HUD, or due to other reasons. This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations.

On or about August 1, 2007, Petitioner's HUD-insured primary mortgage was in default. *Sec'y. Stat., Ex. A, Declaration of Brian Dillon<sup>1</sup> (Dillon Decl.)*, ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to the mortgagee to bring the Petitioner's mortgage current. *Id.* In exchange for this relief, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$3,084.00. The Note cites specific events that make the debt become due and payable. One such event is the payment of the primary mortgage. *Sec'y. Stat., Ex. B*, ¶ 4(A)(i). On or about May 14, 2015, the FHA insurance on Petitioner's primary mortgage was terminated when the primary mortgage was paid in full. *Dillon Decl.*, ¶ 4; *Ex. B* ¶¶ 4(A)(i) & (iii). Once the primary mortgage was paid in full, the Subordinate Note became due and payable. Petitioner has not made any payments on this Note.

Petitioner remains in default and is indebted to the Secretary in the following amounts:

- (a) \$3,084.00 as the unpaid principal balance as of August 31, 2016;
- (b) \$2.57 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 1.0% per annum until paid.

*Dillon Decl. Ex. A* ¶ 5.

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

Pursuant to 31 C.F.R. § 285.11(e), a notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice of Intent”) dated September 6, 2016 was sent to Petitioner. *Sec’y. Stat.*, ¶ 10. 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 written repayment agreement or pay the debt in full in response to the Notice of Intent. *Id.*

The Secretary’s proposed repayment schedule is \$87.07 per month or 15% of Petitioner’s disposable pay, as recommended by the Federal Claim Collection Standards. *Sec’y. Stat.*, ¶ 18.

### **DISCUSSION**

The Secretary claims that Petitioner’s debt is past due and legally enforceable and thus seeks authorization of his proposed repayment schedule for Petitioner. In support of his position, the Secretary produced a copy of the Note signed by Petitioner, along with a copy of a sworn declaration from the Director of HUD’s Asset Recovery Division in which the Director substantiates the debt amount owed by Petitioner. *See Sec’y. Stat.*, Ex. B; *Dillon Decl.*, ¶ 5.

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims that her primary mortgage lender, PHFA, is responsible for payment of the Subordinate Note. Petitioner instead asserts that PHFA should have included all debts at the time Petitioner paid off her primary mortgage. *Hearing Req.* at 1. By failing to notifying her of the outstanding Subordinate Note, it is Petitioner’s contention that PHFA acted in error, and thus, PHFA’s “mistake” absolves her of her responsibility to pay the Subordinate Note. *Id.*

As support, Petitioner introduced into evidence a copy of a letter from PHFA explaining that if Petitioner’s escrow account showed a deficiency balance, the deficiency would have been added to her mortgage payoff figure. *See PHFA Letter*, filed May 30, 2017. However, this letter only proves that if any PHFA debt existed, it would have been included in Petitioner’s final mortgage payment. The substance of the letter merely serves to clarify, for recordkeeping purposes, the satisfaction of Petitioner’s mortgage with PHFA. This letter, standing alone, makes no reference to the Subordinate Note that is the subject of this proceeding and, consequently, has no bearing on whether the subject debt is enforceable or not.

The Note is separate and distinct from the PHFA primary mortgage and it clearly indicates that it becomes due when Petitioner pays “in full all amounts due under the primary Note.” *Sec’y. Stat.*, Ex. B ¶ 4(A)(i). On or about May 14, 2015 Petitioner’s primary mortgage was paid in full. *Dillon Decl.* ¶ 4. This event triggered the timeline for the Subordinate Note to become due. As such, Petitioner’s contractual obligation to pay on the Note remained intact.

For Petitioner not to be held liable for the alleged debt, she must produce evidence of either (1) a written release from HUD specifically discharging Petitioner’s obligation for payment of the alleged debt; or (2) evidence of valid or valuable consideration paid to HUD that released Petitioner from her obligation, or was accepted by the lender with the intent to release Petitioner from her legal obligation. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); William Holland,

HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518-H51 (January 27, 1988); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986).

Petitioner has failed, in this case, to produce evidence of a written release from HUD that discharges her for the debt associated with the Subordinate Note, or evidence of valuable consideration paid to HUD in satisfaction of the alleged debt. However, the Secretary has successfully met his burden of proof that the alleged debt is past due and legally enforceable, despite Petitioner's failure to provide sufficient evidence to refute or rebut the Secretary's claim and supporting documentation.

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)). Because Petitioner has failed to meet her burden of proof, the Court finds that Petitioner's claim fails for lack of proof.

### **ORDER**

Based on the foregoing, Petitioner remains contractually obligated to pay the amount so claimed by the Secretary. The Order imposing the stay of referral of this matter to the U.S. Department of 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 in an amount equal to 15% Petitioner's monthly disposable pay. It is

**SO ORDERED,**



Vanessa L. Hall  
Administrative Judge

**Review of determination by hearing officers.** A motion for reconsideration of the Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 30 days of the date of the written decision, and shall be granted only upon a showing of good cause.