

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

In the Matter of:

**STEPHOND WEST,**

Petitioner

HUDOA No.: 17-AM-0026-AG-006

Claim No.: 721008939-0A

March 14, 2018

**DECISION AND ORDER**

On December 22, 2016, Stephond West (“Petitioner”) filed a *Request for Hearing* (“Hearing Request”) concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for collection of debts allegedly owed to the United States Government.

The Secretary designated the administrative judges of this Office to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This case 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.

As a result of Petitioner’s *Hearing Request*, referral of the debt to the U.S. Department of the Treasury for issuance of an administrative wage garnishment was temporarily stayed by the Court on December 28, 2016, until the issuance of this *Decision and Order*. (*Notice of Docketing, Order, and Stay of Referral* (“Notice of Docketing”), dated December 28, 2016).

**Background**

On January 4, 2014, Petitioner executed and delivered to the Secretary a Subordinate Note (“Note” or “Subordinate Note”) in the amount of \$39,365.40, in exchange for HUD advancing funds to Petitioner’s FHA insured mortgage lender. (Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed January 27, 2017; Ex. 1, Note.) The Note described four events that would make the debt immediately due and payable. (Sec’y Stat., ¶ 4; Note, p. 2, ¶ 4.) One of these events was the payment in full of the primary note and related mortgage. *Id.* On or about

February 25, 2016, the insurance on the first mortgage was terminated, as the mortgage was paid in full. (Sec'y Stat., ¶ 5; Ex. 2, Declaration of Brian Dillan<sup>1</sup> ("Dillan Decl.")).

HUD states that it has attempted to collect on the Note from the Petitioner, but without success. (Sec'y Stat., ¶ 6.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a. \$39,071.03 as the unpaid principal balance as of December 31, 2016;
- b. \$97.65 as the unpaid interest on the principal balance at 1% per annum through December 31, 2016; and
- c. Interest on said principal balance from January 1, 2017, at 1% per annum until paid.

(Sec'y Stat., ¶ 7; Dillan Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner on November 18, 2016. (Sec'y Stat., ¶ 8; Dillan Decl., ¶ 6.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 7.) To date, Petitioner has not entered into such an agreement. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 7.)

The Secretary has been unable to obtain a current pay statement from Petitioner. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 9.) Accordingly, the Secretary proposes a repayment schedule of \$1,104.87 per month, which will liquidate Petitioner's debt in approximately three years, as recommended by the Federal Claims Collection Standard, or, in the alternative, 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 10, Dillon Decl., ¶ 9.)

### Discussion

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, 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). Petitioner may also present evidence that the terms of the proposed repayment schedule are unlawful, would cause undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. Id.

As evidence of Petitioner's indebtedness, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note signed by Petitioner and the sworn declaration of the Director of HUD's Asset Recovery Division. (See Sec'y Stat., Ex. 1, Ex. 2.) Accordingly, this Court finds the Secretary has met his initial burden.

In Petitioner's Hearing Request, filed December 22, 2016, Petitioner disputes the existence of the debt. Specifically, the Petitioner asserts in the Hearing Request and in a *Letter from Petitioner* dated February 9, 2017, that Fidelity National Title Insurance Company ("FNTIC") owes the alleged debt. (Hearing Req.; Pet. February 9 Ltr. ¶ 2.) Petitioner states that he is not liable to HUD due to FNTIC's "failure to provide due diligence as a title company to

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

make sure all liens were satisfied.” (Pet. December 22 Ltr. ¶ 2.) Petitioner, therefore, argues that he should be relieved of his liability due to FNTIC’s negligence.<sup>2</sup>

Petitioner produced a Form T-7: Commitment for Title Insurance (“CTI”) to evidence FNTIC’s alleged negligence. (*Petitioner’s Supplemental Documentary Evidence* (“Pet.’s Supp. Doc. Evid.”), filed April 4, 2017, unmarked exhibit). The CTI describes FNTIC’s responsibilities to the policy holder. Schedule C of the CTI states that FNTIC will not cover loss, costs, and expenses resulting from a list of specified requirements unless satisfied by the policy holder before the policy is issued. *Id.* Within those requirements is the deed of trust dated January 4, 2014, which was signed by petitioner to secure the payment of \$39,365.40 to the order of HUD. *Id.* Thus, FNTIC disclaimed any liability for the debt owed to HUD.

Further, a third party’s error or negligence does not normally relieve Petitioner of liability for the debt. Bryan McClees, HUDOA No. 17-AM-0037-AO-010 (February 14, 2018). Petitioner’s obligation to pay the debt derives from the terms of the Note. Cydney A. Taylor, HUDOHA No. 14-AM-0063-AO-005 (October 22, 2014).

The Note signed by Petitioner on January 27, 2014 states:

#### 7. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay to full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any person signing this Note may be required to pay all of the amounts owed under this Note.

(Sec’y Stat., Ex. 1, p. 2, ¶ 2.)

Petitioner signed the Note voluntarily and is obliged to comply with its terms. Petitioner has failed to cite any legal authority or language in the Note that requires the Secretary to forgo collection of this debt from Petitioner. Further, Petitioner has not provided any evidence that HUD released Petitioner from his obligation to pay the debt.<sup>3</sup> The Note became legally enforceable on or about February 25, 2016 when the primary mortgage was paid in full. (Sec’y

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<sup>2</sup> Petitioner did not offer a legal theory explaining why negligence on FNTIC’s part would render the collection of the debt from Petitioner unenforceable.

<sup>3</sup> “To prove a lender waived its rights under the loan, there must be either (1) a release in writing from the lender specifically discharging Petitioner’s obligation or (2) valuable consideration accepted by the lender from the Petitioner, which would indicate the intent to release.” Elva and Gilbert Loera, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004), citing Jo Dean Wilson, HUDBCA No. 02-A-CH-AWG09 (January 30, 2003).

Stat., ¶ 5; Dillan Decl., ¶ 4.) The Petitioner, by signing the Note, agreed that HUD can require him to pay “all of the amounts owed under this Note.” (Note, p. 2, ¶ 2.)

Petitioner also contends that he was not given notice of the sale of the property nor an opportunity to be present at the closing of the property in question. (Pet. December 22 Ltr., ¶ 3.) Further, Petitioner evidences his claim by providing a Final Decree of Divorce and a Quitclaim Deed transferring the underlying property to Petitioner’s ex-wife. (*Petitioner’s Documentary Evidence* (“Pet’r’s Doc. Evid.”), filed February 8, 2017, Ex. B, Ex. C.)

The Final Decree of Divorce was heard by Dallas County District Court of Texas on November 21, 2011. (Pet’r’s Doc. Evid., Ex. B.) The Quitclaim Deed, transferring all of Petitioner’s rights in the underlying property to his ex-wife, was signed by Petitioner on March 30, 2012. (Pet’r’s Doc. Evid., Ex. C.) The Note was signed by Petitioner on January 27, 2014. At the time the Note was signed, Petitioner had already transferred all rights to the property to his ex-wife under the Quitclaim Deed. However, the Petitioner upon signing the Note became a co-signer with his ex-wife. “It is well-established law that where several parties are co-signers of a promissory note, the creditor may proceed against any co-signor for repayment of the full amount of the debt.” Gary Cannady, HUDOA No. 08-M-CH-AWG26, p. 5 (June 12, 2009) citing Edgar Joyner Sr., HUDBCA No. 04-A-CH-EE-52, p. 7 (June 15, 2005).

In accordance with 31 C.F.R. § 285.11(e)(1)’s notice requirements, HUD sent a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings to Petitioner on November 18, 2016. (Sec’y Stat., ¶ 8; Dillan Decl., ¶ 6.) Petitioner soon after filed his Request for Hearing on December 22, 2016. Petitioner cites no legal authority establishing that HUD had an additional duty to inform Petitioner of the sale of a home he previously transferred all legal title from. Lastly, Petitioner does not raise the claim that the proposed repayment plan by HUD would cause him financial hardship. Accordingly, this Court finds that HUD has fulfilled its statutory requirements and can proceed against the petitioner for the full amount of the debt.

### **ORDER**

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is

**ORDERED** that 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

**FURTHER ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation through administrative wage garnishment to the extent authorized by law.

**SO ORDERED.**



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H. Alexander Manuel  
Administrative Judge