

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

In the Matter of:

BRIAN BLAKE,

Petitioner.

17-AM-081-AG-060

721010048

November 21, 2018

DECISION AND ORDER

On August 23, 2017, Brian Blake, ("Petitioner") filed a *Request for Hearing* concerning the amount, and enforceability of an alleged debt owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishments as a mechanism for the collection of debts owed to the United States government.

The Secretary of HUD has designated the administrative judges of this Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts using administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81(b).

BACKGROUND

On September 1, 2006, Petitioner sought financial assistance from HUD to help him avoid possible mortgage foreclosure by his primary lender¹ ("primary lender"). HUD loaned Petitioner the sum of \$5,316.44 to help him avoid defaulting on his mortgage with BoA. (See Secretary's Statement, ("Sec'y Stat."), ¶ 2; Exh. 1, Declaration of Brian Dillon, ("Dillon Decl.") Director, Asset Recovery Division, HUD Financial Operations Center, ¶ 5 (a).). Petitioner executed and duly delivered a subordinate note ("Note"), evidencing this loan to HUD. (See Sec'y Stat., Exh. 2, Note, signed Brian Blake on p. 2 and dated September 1, 2006).

Under the Note's terms, Petitioner was to pay the principal amount of the unpaid balance until the Note was paid in full. (See Sec'y Stat., Ex. 2, ¶2). The Note cited specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable -

¹ Based on the Neighborhood Watch Early Warning System (See Exh. 1, Porter Decl.), Regions Bank was the primary lender until November, 2005 followed by Countrywide Home Loans Inc. beginning on or around December, 2005, then the loan was assigned to Bank of America (NA Charlotte) on or around October 2011. Petitioner alleges that the loan began with Countrywide Home Loans Inc. and was quickly transferred to Regions Bank. (Blake email, dated June 18, 2018).

one of which was when Petitioner's underlying mortgage to his primary lender was refinanced or otherwise paid in full. (See Sec'y Stat., Ex. 2, ¶ 4(A)(i), (iii) & (iv)).

On August 30, 2016, Petitioner's primary lender notified HUD that Petitioner's underlying mortgage with BoA was paid in full. Exh. 1, Dillon Decl., ¶ 4. The previous information automatically triggered both the termination of BoA's insurance contract with the Federal Housing Administration, as well as the provisions of ¶ 4(A)(i) & (iii) of the Note, which required Petitioner to pay the full amount owed under the Note to HUD. (See Sec'y Stat., Ex. 2, ¶ 4).

At that time, HUD made its demand upon Petitioner to pay the amounts owed, but Petitioner failed to do so. As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$5,316.44 as the unpaid principal balance as of August 31, 2017;
- b) \$26.58 as the unpaid interest on the principal balance at 1% per annum through August 31, 2017;
- c) \$355.38 as the unpaid penalties and administrative costs through August 31, 2017; and
- d) interest on said principal balance from September 1, 2017, at 1% per annum until paid.

(See Sec'y Stat., ¶ 7; Exh. 1, Dillon Decl., ¶ 5).

On July 27, 2017, a *Notice of Intent to Initiate Wage Garnishment Proceedings* ("Notice") was mailed to Petitioner. (See Sec'y Stat., ¶ 8; Exh. 1, Dillon Decl., ¶ 6). Under to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was given an opportunity to enter into a written repayment agreement under terms acceptable to HUD (See Exh. 1, Dillon Decl., ¶ 7). Petitioner has not provided a copy of his most recent pay statement. (See Sec'y Stat., ¶ 10; Exh. 1, Dillon Decl., ¶ 8). As a result, the Secretary proposes a monthly repayment schedule of 15% of the Petitioner's disposable income. *Id.* (See 31 C.F.R. §285.11(i)(2)(i)(A)).

DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. (See 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. (See 31 C.F.R. § 285.11(f)(8)(ii)). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause undue hardship to Petitioner, or that the alleged debt is legally unenforceable. *Id.*

As evidence of the Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement* (Sec'y Stat.) with accompanying *Sworn Declaration* (Exh. 1, Dillon Decl.) by Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center; the *Secretary's*

Supplemental Statement (Sec’y Supp. Stat.) with accompanying *Sworn Declaration* (Exh. 1, Porter Decl.) by Kathleen M. Porter, Asset Recovery Division, HUD Financial Operations Center; a copy of the Note; and accompanying notices and documents. Accordingly, the Court finds that the Secretary has met his initial burden of proof.

In Petitioner’s *Request for Hearing*, dated July 27, 2017, he states that he wholly refutes the alleged debt because at no time did he “do a modification to my home loan at any point that the loan was in effect.” He maintains, “the paperwork has been falsified by Morris-Griffin/First Madison Services as Countrywide...” (See Blake email dated June 18, 2018). Further, he disputes the amount of the arrears and the number of payments in arrears on his primary mortgage. In support of these claims, Petitioner filed email correspondence; a partial Deed of Trust (“Deed”); a Landroll Tax Collection payment, dated January 26, 2006; and an Experian credit report for Bank of America (BoA), FHA real estate loan, account number 132286XXX.

Fraudulently Secured Document and Unauthorized Signature

Petitioner seeks to establish his case by claiming that he does not owe the alleged debt because the loan was executed “falsely without my knowledge” (See Blake email dated February 16, 2018). Petitioner does not identify who it was that signed the Note but contends that Countrywide Home Loans, a previous mortgagee, fraudulently secured the Note. However, this argument is belied by the fact that Petitioner’s signature appears on the Note and that the Deed of Trust document, related to the Note, was submitted by Petitioner into the record. (See Ex. 1, Dillon Decl. ¶ 4, Ex. 2, Note ¶ 7).

The Note was executed in Mississippi. Mississippi law provides the standard for analyzing the authenticity of the signature at issue in this case. (See *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (“Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state”); *Boseman v. Connecticut General Life Insurance Co.*, 301 U.S. 196, 202 (1937) (“In every forum a contract is governed by the law with a view to which it was made”). See also *Justito Poblete*, HUDBCA No. 98-A-SE-W302 (April 30, 2010) (applying California law to analyze a forgery defense to enforcement of a promissory note assigned to HUD)).

Under Mississippi law, “unauthorized signature” is defined as a signature made without actual, implied, or apparent authority, to include the term forgery. Miss. Code Ann. § 75-1-201(41). Additionally, the Mississippi Supreme Court relies on the Uniform Commercial Code (UCC) when deciding matters related to fraud. “If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity (in this case the Secretary), but the signature is presumed to be authentic and authorized...” UCC § 3-308(a). Applying the facts of this case to the UCC, the Secretary is not required to prove that the signature on the Note is valid until some evidence is introduced to support a finding that the signature is unauthorized or a forgery. Official comment 1 to UCC § 3-308. However, if sufficient evidence is introduced to support a finding of forgery, “the burden of establishing the signature by a preponderance of the total evidence is on the plaintiff,” or in this instance the Secretary. (See *Justito Poblete*, HUDBCA No. 98-A-SE-W302 (April 30, 2010)).

In this case, Petitioner never presented evidence to refute the authenticity of the Note's signature. Petitioner states that the loan was executed "falsely without my knowledge" (See Blake email dated February 16, 2018). The statement, *without Petitioner's knowledge*, can be disputed based on Petitioner's evidence. He submitted into the record the Deed, which is a security instrument acknowledging the Note's existence and the loan's principal sum. Moreover, Petitioner received the funds from the loan, which prevented foreclosure on his home. Taking these facts to be true, the above is an example of an unauthorized signature's *ratification*.

"*Ratification* is a retroactive adoption of the unauthorized signature by the person whose name is signed and may be found from conduct as well as from express statements. For example, it may be found from the retention of benefits received in the transaction with knowledge of the unauthorized signature." Official comment 3 to UCC § 3-403. Further, "ratification has been defined as the voluntary election by a person to adopt in some manner as his own an act which was purportedly done on his behalf by another person, the effect of which is to treat the act as if originally authorized by him. (See *Rakestraw v. Rodriques*, 8 Cal. 3d 67, 500 P.2d 1401 (1972)). Additionally, "...a customer who does not within one (1) year after the statement or items are made available to the customer discover and report the customer's unauthorized signature on or any alteration on the item *is precluded from asserting against the bank the unauthorized signature or alteration.*" (emphasis added) Miss. Code Ann. § 75-4-406(f) (2013).

Here, Petitioner was in possession of the Deed no later than October 27, 2006. The Deed is the security instrument for the Note. At that time, Petitioner should have known whether he signed the Note referenced in the Deed. If the Note was implemented by an unauthorized signature, then he should have reported it within the year. An unauthorized signature report to the bank or law enforcement is not evident in the record.

To be clear, this Court presumes the authenticity of the signature on the Note, absent Petitioner's showing to the contrary. UCC §3-308(a). Notwithstanding the Court's finding that Petitioner's signature on the Note is authentic, however, Petitioner by his own actions of receiving the loan's funds and taking no action on the Deed is enough to bind him to the terms of the Note. Accordingly, I find that Petitioner's actions amount to ratification of the Note. Finally, the Court observes that Petitioner submitted an incomplete *Deed of Trust* into the record. The Deed submitted by Petitioner contains pages one and two of four. The missing page includes the signature block where Petitioner was required to sign. For the foregoing reasons Petitioner's claim fails.

Disputed Amount in Arrears and Number of Payments Missed

Petitioner disputes the amount of the arrears and the number of payments in arrears on his primary mortgage. Petitioner states that he was only in arrears for one mortgage payment and that his alleged indebtedness to HUD was improperly calculated. The Porter Declaration illustrates that the determination of a valid HUD claim is supported by records in the Debt Collection and Asset Managements System (DCAMS) and related manual recordkeeping. (See Exh. 1, Porter Decl.). The mortgagee reported Petitioner's 10-month delinquency for the "Reporting Period 9/2006" in the Neighborhood Watch Early Warning System. *Id.* To refute the Secretary's evidence Petitioner has submitted an Experian credit report dated July 9, 2018.

This Court consistently maintains that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or enforceable.” (See *Michael R. Bridges*, HUDOHA No. 13-AM-0125-AG-054 (August 13, 2013); *Eric and Eliza Rodriguez*, HUDOHA No. 13-AM-0061-AG-023 (April 17, 2013) (citing *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005); *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

In support of his claim that the primary mortgage arrears were miscalculated, Petitioner provides an Experian credit report corresponding to his BoA mortgage. Petitioner asserts that there is conflicting information between the Experian report and the Neighborhood Watch Early Warning System. The Experian report presents little to no probative evidence for the trier of fact. The report reflects the payment history from 2009 until 2016, outside the temporal window when the Note was initiated. From the report’s payment status section, it is inconclusive whether the past due days are calculated for the loan’s entirety or only the period held by BoA. Finally, most consumers understand that among the three credit reporting agencies (Experian, Equifax, and Trans Union) the reports are often quite different. Here, the Secretary has provided correlating evidence from three separate systems with two reporting sources. For these reasons the Court finds that the Experian report is not determinative of a miscalculation in the Petitioner’s delinquent months or the amount in arrears.

Lack of Probative Evidence

Petitioner filed additional correspondence on June 18, 2018, and July 9, 2018, that contained repeated denials that Petitioner is indebted to HUD. In these emails, he attached supporting documents for his claims. Most of Petitioner’s evidence is either incomplete or not probative.

Petitioner has not brought forth any evidence to show that the amounts claimed by the Secretary were incorrectly calculated. As stated above, “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or enforceable.” (See *Michael R. Bridges*, HUDOHA No. 13-AM-0125-AG-054 (August 13, 2013); *Eric and Eliza Rodriguez*, HUDOHA No. 13-AM-0061-AG-023 (April 17, 2013) (citing *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005); *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Here, Petitioner has failed to come forward with any appreciable evidence to meet his burden of proof.

The Court has thoroughly reviewed all of Petitioner’s evidence. As noted above, the Deed is missing the last two pages, and the Experian report does not match the relevant timeframe. Finally, the tax record offered occurs before the Note came into enforcement and reflected an escrow disbursement for the year 2005. A document from the following year might support Petitioner’s assertions, but this is not present in the record. The Court finds the Secretary’s diligence in analyzing Petitioner’s claim, and the Secretary’s explanation of its review to be more than sufficient to prove that Petitioner is indebted to HUD in the amounts

claimed by the Secretary. I therefore find that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

Determining Repayment Schedule

The Secretary has made efforts to access Petitioner's income information to determine a repayment schedule. Petitioner has not provided a copy of his most recent pay statement. (*See* Sec'y Stat., ¶ 10; Exh. 1, Dillon Decl., ¶ 8). The Secretary's proposed repayment schedule is \$160.00 per month, which will liquidate the debt in approximately three years. Federal Claims Collection Standards recommends that collection not exceed 15% of Petitioner's disposable income. *Id.*

ORDER

For the reasons set forth above, 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 using administrative wage garnishment in the amount of 15% of Petitioner's disposable income per month.

SO, ORDERED,

A handwritten signature in black ink, appearing to read "H. Alexander Manuel", written over a horizontal line.

H. Alexander Manuel
Administrative Judge