

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

In the Matter of:

Dionna Kaska, f.k.a. Dionna Burnett,

Petitioner.

17-AM-0214-AG-088

721010428

August 21, 2018

DECISION AND ORDER

On September 19, 2017, Dionna Kaska, f.k.a. Dionna Burnett (“Petitioner”) filed a 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 (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishments as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has 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 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.

BACKGROUND

On or about April 29, 2015, Petitioner executed and delivered to the HUD Secretary a Partial Claim Promissory Note (“Note”) in the amount of \$47,914.54. (*See* Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed October 18, 2017). In return, HUD advanced funds to Petitioner’s mortgage lender, thereby allowing Petitioner to avoid foreclosure on her home. (*See* Sec’y Stat., ¶ 3; Ex. 2, Declaration of Brian Dillon (“Dillon Decl.”), ¶ 4). The Note included four scenarios, any one of which would make the debt immediately due and payable. (*See* Dillon Decl., ¶ 4; Ex. 1, Note, ¶ 4). One of those scenarios included the full payment of all amounts due under the primary note by Petitioner. (*See* Dillon Decl., ¶ 4; Ex. 1, Note, ¶ 4(A)(i)).

On or about December 29, 2016, the FHA Insurance on Petitioner’s first mortgage was terminated, as the lender indicated that the mortgage was paid in full. (*See* Dillon Decl., ¶ 4). HUD has attempted to collect on the claim from Petitioner, but Petitioner remains in delinquent. (*See* Sec’y Stat., ¶ 5; Dillon Decl., ¶ 5). As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$47,914.54 as the unpaid principal balance as of September 30, 2017;

- b) \$239.46 as the unpaid interest on the principal balance at 1% per annum through September 30, 2017;
- c) \$2,919.78 as the unpaid penalties and administrative costs through September 30, 2017; and
- d) interest on said principal balance from October 1, 2017, at 1% per annum until paid.

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

On August 25, 2017, a Notice of Intent to Initiate Wage Garnishment Proceedings ("Notice") was mailed to Petitioner. (See Sec'y Stat., ¶ 6; Dillon Decl., ¶ 6). Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was given an opportunity to enter into a written repayment agreement under the terms acceptable to HUD (See Dillon Decl., ¶ 7). To date, Petitioner has failed to provide HUD with a copy of her current paystub or other income information. (See Sec'y Stat., ¶ 10; Dillon Decl., ¶ 9). As a result, the Secretary proposes a repayment schedule in the amount of \$1,440.00 per month or in the alternative, the Secretary proposes a repayment schedule of 15% of the Petitioner's disposable income. (See Sec'y Stat., ¶ 10; Dillon Decl., ¶ 9). The former option is in accordance with the recommendation of the Federal Claims Collection Standards and will liquidate the debt in approximately three years. (See 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. (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 an undue hardship to Petitioner, or that the collection of the debt may not be pursued due to operation of the law.

As evidence of the Petitioner's indebtedness, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note signed by Petitioner and her co-borrower, and the sworn declaration of Brian Dillon, the Director of HUD's Asset Recovery Division, substantiating the loan amount. (See Sec'y Stat., Ex. 1; Ex. 2). Accordingly, the Court finds that the Secretary has met his initial burden of proof.

Petitioner contends that the existence of the debt claimed by the Secretary. (See Petitioner's Hearing Request ("Pet'r's Hr'g Req."), dated September 19, 2017). Petitioner first contends that she has "no knowledge or information concerning the purported loan." *Id.* Petitioner also contends that she received "no prior notice or mailings from [HUD] regarding said purported loan." *Id.* Petitioner finally asserts that she believes the debt owed from the loan is likely due to an "apparent fraud." *Id.* However, Petitioner introduced no evidence to support her position or to substantiate her claims.

In the Note, it is evident that Petitioner agreed to make a payment to HUD in the amount of \$47,914.54 in the event that "the borrower has paid in full all amounts due under the primary Note and related mortgage, deed of trust or similar Security Instruments issued by the Secretary."

(See Sec'y Stat., Ex. 1, Note, ¶ 2; 4(A)(i)). Additionally, the Note contained specific instructions on how and where payment should be made to the Secretary, and those instructions were unambiguous. (See Sec'y Stat., Ex. 1, Note, ¶ 4(B)).

For Petitioner to prove that a debt owed to the Secretary has been satisfied, there either must be a written release from HUD or evidence of valuable consideration accepted by HUD from the Petitioner. *See Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Petitioner did not provide any documents to reflect her full payment of the HUD debt or any valuable consideration accepted by HUD from the Petitioner. (See Pet'r's Hr'g Req.). Similarly, Petitioner's claims of fraud are not supported by any documentary evidence, and the Note presented by the Secretary was signed by Petitioner and her co-borrower and notarized. (See Sec'y Stat., Ex. 1). 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 enforceable." *See Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), *citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). In light of the available documentary evidence, Petitioner has not met the burden of proof that the debt was not past due or enforceable, refuting the Secretary's *prima facie* proof of the Petitioner's indebtedness. Without such evidence, the Court finds that Petitioner's claim fails for lack of proof. I, therefore, find that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

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 by means of administrative wage garnishment to the extent authorized by law.

SO ORDERED,

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

H. Alexander Manuel
Administrative Judge