

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

In the Matter of:

Christin Roach,

Petitioner.

17-VH-0036-AG-012

7210009194

December 4, 2017

DECISION AND ORDER

On January 04, 2017, Christin Roach (“Petitioner”) filed a hearing request 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.

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.

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f) (4), on January 05, 2017, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On February 06, 2017, the Secretary filed her *Statement* along with documentation in support of her position. To date, Petitioner has failed to file sufficient documentary evidence in support of her claim, or in response to the orders issued by this Court. This case is now ripe for review.

BACKGROUND

On or about March 17, 2015, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$2,281.04. The Note secured a Subordinate Mortgage held by the Secretary. (*Secretary's Statement* ("Sec'y. Stat.") ¶ 2, filed February 06, 2017; Ex. A, Note.) 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.* ¶ 4. On or about March 22, 2016, the FHA mortgage insurance on the primary mortgage was terminated, as the lender indicated the primary note and mortgage was paid in full. *Sec'y. Stat.* ¶ 5. Once the primary mortgage was paid in full, the Subordinate Note became due and payable. Petitioner has not made any payments on this Note.

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. (*Sec'y. Stat.*, ¶ 6.) As a result, Petitioner remains in default on the Note and is indebted to the Secretary in the following amounts:

- (a) \$2,281.04 as the total unpaid principal balance as of December 30, 2016;
- (b) \$3.80 as the unpaid interest on the principal balance at 1% per annum through December 30, 2016; and
- (c) interest on said principal balance from December 31, 2017 at 1% per annum until paid.

Id.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated December 8, 2016, was sent to Petitioner. (*Sec'y Stat.*, ¶ 8). In her Hearing Request, Petitioner checked the box indicating that a garnishment of her wages would create a financial hardship. However, Petitioner did not provide HUD or this Court with any supporting documentary evidence of financial hardship as required by 31 C.F.R. 285.11(f)(8)(ii) and 31 C.F.R. 85.11(k)(3). *Id.* at ¶ 10.

Based on the weekly pay statement provided by Petitioner, the Secretary proposes a repayment schedule of \$178.28 weekly. Alternatively, the Secretary requested that the repayment be set at 15% of the Petitioner's disposable income.

DISCUSSION

Petitioner claims that she does not owe the debt because her mortgage was fully paid off when her home was sold. According to Petitioner, the debt owed pursuant to HUD's Note was included in the payoff, and HUD was paid upon closing of the sale of her home. *Petitioner's Hearing Request (Hrg. Req.)*, filed January 04, 2017. However, Petitioner does not provide any documentary evidence in support of her claim, nor does she demonstrate that HUD's Note was paid in full.

For Petitioner not to be held liable for the full amount of the debt, there must either be a release in writing from the former lender explicitly relieving Petitioner's obligation, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986).

In this case, Petitioner has failed to produce any evidence of a written release from HUD that discharges Petitioner for the debt associated with the Subordinate Note. She has also failed to produce any evidence of valuable consideration paid to HUD in satisfaction of the alleged debt that would render the alleged debt unenforceable.

The Subordinate Note is a separate and distinct debt from the primary mortgage. See Catherine Coley, HUDOA No. 16-VH-0147-AG-039 at 3 (July 24, 2017). The Note clearly indicates that it becomes due and payable when the borrower has paid in full all amounts due under the primary Note. *Sec'y. Stat.*, Ex. 2 ¶ 4(A)(i). On or about March 22, 2016, Petitioner's primary mortgage was paid in full, which triggered the timeline for the Subordinate Note to become due. As such, Petitioner's contractual obligation to pay the Note remained intact.

In her Hearing Request, Petitioner checked the box indicating that a garnishment of her income would create an undue financial hardship. However, Petitioner has failed to submit any documentary evidence that would persuade this Court in accepting Petitioner's financial hardship claim.

Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), Petitioner is required to show, by a preponderance of the evidence, that the proposed wage garnishment repayment schedule would create a financial hardship. In a case involving a claim of financial hardship, Petitioner "must submit 'particularized evidence,' including proofs of payment, showing that she will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation." Ray J. Jones, HUDAJF 84-1-OA at 2 (March 27, 1985).

Petitioner did not submit any financial statements to this Court. Specific evidence was needed to assist this Court in making its determination of financial hardship. Petitioner was ordered to submit additional documentation, and she was informed that, "documentary evidence should not be limited to a mere list of expenses, but instead must include proof of payment, where applicable." See Order to Show Cause, dated March 29, 2017. The Court outlined, with specificity, the types of documentary evidence that could be considered in reviewing Petitioner's claim of financial hardship. Petitioner however did not produce any documentation.

In the absence of documentary evidence that supports Petitioner's alleged income and expenses, the Court is unable to determine whether the proposed wage garnishment repayment schedule would create a financial hardship for Petitioner. Thus, the Court finds Petitioner's financial hardship claim fails for lack of sufficient proof.


Without a record of evidence from the Petitioner that either refutes or rebuts what the Secretary has presented, the Court must also find that petitioner remains contractually obligated to pay the alleged debt as so claimed by the Secretary.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount equal to the lesser of \$178.28 per week or 15% of Petitioner's weekly 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.