

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

In the Matter of:

Tonja Walker,

Petitioner.

17-VH-0157-AG-041

721010078

September 12, 2018

DECISION AND ORDER

On August 8, 2017, Tonja Walker, (“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 August 9, 2017, 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 7, 2017, 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*. While Petitioner filed certain documentation with her *Hearing Request* in support of her position, such documentation was considered insufficient as proof of Petitioner’s position. The Court subsequently ordered Petitioner, on September 19, 2017 and November 27, 2017, to file documentary evidence that more sufficiently supported her claim that HUD released her from the subject debt. 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. To date, Petitioner has failed to comply with the Court’s Orders. This case is now 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 Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D), and applicable Departmental regulations 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.*

FINDINGS OF FACT

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.

On or about February 5, 2015, Tonja E. Walker ("Petitioner") executed and delivered to the Secretary a Partial Claim Promissory Note ("Note") in the amount of \$19,137.69. The Note secured a Subordinate Mortgage (Mortgage) held by the Secretary. *Sec'y. Stat.* ¶ 2, Ex. 1, Note; Ex. 2, *Declaration of Brian Dillon* ("Dillon Decl."), ¶ 4.

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat.* ¶ 3, Ex. 2, *Declaration of Brian Dillon* ("Dillon Decl."), ¶ 4.

By terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs: "(3)(A) on March 1, 2045 or, if earlier, when...(i) borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary; or (ii) the maturity date of the primary note has been accelerated; or (iii) the primary note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary; or (iv) the property is not occupied by the purchaser as his or her principal residence." *Sec'y. Stat.* ¶ 4, Ex. 1, Note, ¶ 3.

On or about August 16, 2016, the Petitioner's first mortgage was paid in full and the FHA mortgage insurance was terminated as the primary lender indicated that its mortgage was paid in full. Exhibit 2,14. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.* at ¶ 5; Ex. 2, *Dillon Decl.* ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment dated July 27, 2017, was mailed to Petitioner at her last-known address. *Sec'y. Stat.* at ¶ 6; Ex. 2, *Dillon Decl.* ¶ 6.

Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$19,137.69 as the unpaid principal balance as of July 30, 2017;

- b. \$79.70 as the unpaid interest on the principal balance at 1.0% per annum through July 30, 2017;
- c. \$1,187.42 as the unpaid penalties and administrative costs as of July 30, 2017; and,
- d. interest on said principal balance from August 1, 2017, at 1.0% per annum until paid.

Sec'y. Stat. at ¶ 7; *Ex. 2, Dillon Decl.* ¶ 5.

The Secretary seeks authorization of his proposed repayment schedule for Petitioner. *Sec'y. Stat.* at 3. The Secretary's proposed repayment schedule is \$ 566.80 per month, which will liquidate the debt in approximately three years, as recommended by the Federal Claim Collection Standards. *Sec'y. Stat.*, ¶ 9.

DISCUSSION

Petitioner disputes the existence of the debt based on her position that the subject debt was "paid off at closing." Petitioner contends "I sold the home in August of 2016. Wells Fargo was sent the payoff amount that was owed. I called the title company and they are checking into this issue." *Hearing Req.* at 1.

As support, Petitioner introduced into evidence copies of a letter from Liberty Title indicating closure of the first mortgage loan account, and, the Closure Disclosure Statement for the property previously owned by Petitioner. *See Hearing Req., Attached Liberty Title Letter*, filed August 9, 2017. The documents presented, however, only clarified for recordkeeping purposes satisfaction of Petitioner's primary mortgage loan, not full payment of the subject debt claimed by the Secretary. To date, Petitioner has failed to submit other documentation that would more sufficiently support her position.

The Note is separate and distinct from the primary mortgage herein and it clearly indicates that it became due when Petitioner paid "in full all amounts due under the primary Note." *Sec'y. Stat.*, *Ex. 1* ¶ 3(A)(i). On or about August 16, 2016, Petitioner's primary mortgage was paid in full. *Sec'y. Stat.* at ¶ 5; *Ex. 2, Dillon Decl.* ¶ 4. This event triggered the timeline for the Subordinate Note to become due and has since not been satisfied. So, Petitioner's contractual obligation on the Note remains 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 that proves she has been released from the debt associated with the Note, or that she has paid HUD valuable consideration for the same. 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)). The Secretary has successfully met his burden of proof that the alleged debt is past due and legally enforceable as set forth in the Court’s findings, despite Petitioner’s failure to provide sufficient evidence to refute or rebut the Secretary’s claim and supporting documentation. Because Petitioner has failed to meet her burden of proof, the Court finds that Petitioner’s claim fails for lack of proof.

As a final point, Rule 26.4(c) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*.

(Emphasis added).

Accordingly, I find that, pursuant to Rule 26.4(c), Petitioner’s non-compliance with the Orders issued by this Court provides another basis for the Court rendering a decision against Petitioner.

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 \$ 566.80 per month or an amount equal to 15% Petitioner’s monthly 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.