

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

In the Matter of:

Tracy Collins,

Petitioner.

17-VH-0177-AG-057

721010329

September 17, 2018

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* ("*Hearing Request*") filed by Tracy Collins ("Petitioner,") on August 23, 2017, concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary").

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 pursuant to 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81, and the Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720A). 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 August 23, 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*") at 2. On September 11, 2017, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to comply with the Court's Orders to file documentary evidence in support of her position that the debt is not enforceable at the amount so claimed by the Secretary. This case is now ripe for review.

FINDINGS OF FACT

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A, because of a defaulted loan that was insured against non-payment by the Secretary. The Secretary claims that Petitioner's debt is past due and legally enforceable and thus seeks authorization of his proposed repayment schedule for Petitioner. In support of his position, the Secretary produced a copy of the Note signed by Petitioner, along with a copy of a sworn declaration from the Director of HUD's Asset Recovery Division in which the Director substantiates the debt amount owed by Petitioner. *See Sec'y. Stat.*, Ex. A, *Dillon Decl.*, ¶ 5; Ex. B, Note.

In or about February 2014, the HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Secretary's Statement ("Sec'y. Stat.")*, filed September 11, 2017, Ex. A, ¶ 2, *Declaration of Brian Dillon (Dillon Decl.)*,¹ ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Sec'y Stat.* ¶ 3, Ex. A, *Dillon Decl.* ¶ 4.

In exchange for foreclosure relief, on February 17, 2014, Petitioner executed a Partial Claims Promissory Note ("Note") in the amount of \$18,662.25 in favor of the Secretary. *Sec'y Stat.*, Ex. B, Note. Paragraph 3(A) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. *Id.* at ¶ 3(A)(i). On or about September 1, 2016, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec'y Stat.* ¶ 6, Ex. A, *Dillon Decl.* ¶ 4; Ex. B, Note at ¶ 3(A)(i) & (iii).

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "U.S. Department of HUD, C/O DEVAL LLC, Westpoint 1 – 1255 Corporate Drive, Suite 300, Irving, TX 75038 ... or any such other place as [HUD] may designate in writing by notice to Borrower." *Sec'y Stat.*, Ex. B, Note at ¶ 3(B). Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent. *Sec'y Stat.* ¶ 3, Ex. A, *Dillon Decl.* ¶ 5.

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$18,662.25 as the unpaid principal balance as of August 31, 2017;
- (b) \$93.30 as the unpaid interest on the principal balance at 1% per annum through August 31, 2017;
- (c) \$1158.80 as the unpaid penalties and administrative costs as of August 30, 2017; and

¹ Brian Dillon is the Director of the Asset Recovery Division of HUD's Financial Operations Center.

- (d) Interest on said principal balance from September 1, 2017 at 1% per annum until paid.

Sec'y Stat. ¶ 9, Ex. A, *Dillon Decl.* ¶ 5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated July 27, 2017 ("Notice") was sent to Petitioner. *Sec'y Stat.* ¶ 10, Ex. A, *Dillon 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 with HUD under mutually agreeable terms. Petitioner has not entered into a written repayment agreement in response to the Notice. *Sec'y Stat.* ¶ 11, Ex. A, *Dillon Decl.* ¶ 7.

HUD attempted to obtain a copy of Petitioner's most recent pay statement for calculating a proposed repayment plan based on Petitioner's actual income. To date, however, Petitioner has not provided to HUD a copy of her pay statement. Therefore, HUD's proposed repayment schedule is \$600.00 per month, which will liquidate the debt in three years as recommended by the Federal Claims Collection, or 15% of Petitioner's disposable pay. *Sec'y Stat.* ¶ 13, Ex. A, *Dillon Decl.* ¶ 8.

DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner alleges that she does not owe the full amount of the debt so claimed by the Secretary. See Petitioner's Request for Hearing (Hearing Request) filed August 23, 2017. But, beyond an indication on her *Hearing Request* that she does not owe the amount claimed, Petitioner has failed to submit evidence to otherwise support her position.

The Secretary has successfully met his burden of proof with sufficient evidence to prove that the subject debt in the amount claimed is past due and legally enforceable. In support of his position, the Secretary introduced into evidence copies of the Note associated with the subject debt and signed by Petitioner, and an affidavit from the Director of the Asset Recovery Division of HUD's Financial Operations Center to further substantiate the amount owed. *Sec'y Stat.*, Ex. A, B.

For Petitioner not to be held liable for the subject 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). In this case, Petitioner has failed to produce evidence of a written release from HUD that would otherwise discharge her from the debt associated with the Subordinate Note or to produce

evidence of valuable consideration that she paid directly to HUD in satisfaction of the subject debt. Thus, the Court must rely on what is reflected in the record of this proceeding to make its determination.

The Note herein is a separate and distinct contract from the primary mortgage. The language in the Note indicates, in unambiguous terms, that the subject debt becomes due when Petitioner pays “in full all amounts due under the primary Note.” *Sec’y. Stat.*, Ex. B ¶ 4(A)(i). On or about September 1, 2016, Petitioner’s primary mortgage was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec’y. Stat.* ¶ 13, Ex. A, *Dillon Decl.*, ¶ 4; Ex. B, Note, ¶ 3(A)(i) & (iii). This event triggered the timeline for the Subordinate Note to become due. As such, Petitioner’s contractual obligation to pay on the Note remains intact.

Without evidence to refute or rebut what the Secretary has presented as the amount of the subject debt, the Court is unable to determine the credibility of Petitioner’s claim that the amount claimed by the Secretary is not due. 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)). Therefore, the Court finds here that Petitioner’s claim fails for lack of proof that the amount claimed by the Secretary is in error.

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, because Petitioner has also failed to comply with any of the Orders issued by this Court, I find that Petitioner’s non-compliance with the Court’s Orders provides a basis for rendering a decision against Petitioner pursuant to Rule 26.4(c) of Title 24 of the Code of Federal Regulations.

ORDER

Based on the foregoing, the Court finds that the subject debt is past due and enforceable in the amount alleged by the Secretary.

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 at the proposed repayment schedule of \$600.00 per month, or 15% of Petitioner’s disposable income.

SO ORDERED.

A handwritten signature in blue ink, appearing to read 'V. Hall', is written over a horizontal line.

Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of the Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 30 days of the date of the written decision, and shall be granted only upon a showing of good cause.