

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

In the Matter of:

Manuel Castro,

Petitioner.

17-VH-0180-AG-059

721010063

January 23, 2018

DECISION AND ORDER

On August 23, 2017, Manuel Castro (“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 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*”), 2). On August 31, 2017, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file sufficient documentary evidence in support of his claim, or in response to the orders issued by this Court. This case is now ripe for review.

BACKGROUND

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, because of a defaulted loan that was insured against non-payment by the 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 allegedly owed to the United States government.

On or about June 3, 2011, in exchange for foreclosure relief, Petitioner executed a Promissory Note ("Note") in the amount of \$17,716.41 in favor of the Secretary. *Sec'y Stat.*, Ex. B. The Note secured a Subordinate Mortgage held by the Secretary. *Secretary's Statement ("Sec'y. Stat.")* ¶ 4, filed August 31, 2017; Ex. A, *Declaration of Brian Dillon (Dillon Decl.)* ¶ 4. Paragraph 4(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. *Sec'y. Stat.* ¶ 5, Ex. A, ¶ 4. On or about July 19, 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.* ¶ 6. Upon payment in full of the primary note, the Note became due and payable. To date, Petitioner has not made any payments on this Note. *Sec'y. Stat.* ¶ 7.

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. *Sec'y. Stat.*, ¶ 9. As a result, Petitioner remains in default on the Note and is indebted to the Secretary in the following amounts:

- (a) \$ 17,716.41 as the total unpaid principal balance as of July 31, 2017;
- (b) \$ 73.80 as the unpaid interest on the principal balance at 1% per annum through July 31, 2017;
- (c) \$ 1,106.86 as unpaid penalties and administrative costs as of July 31, 2017; and,
- (d) interest on said principal balance from August 1, 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 July 27, 2017, was sent to Petitioner. *Sec'y Stat.*, ¶ 10.

HUD's proposed repayment schedule is \$525.00 per month, which will liquidate the debt in three years as recommended by the Federal Claims collection, or 15% of Petitioner's disposable pay. Id. at ¶8.

DISCUSSION

Petitioner claims that he does not owe the subject debt because his primary mortgage was paid in full. More specifically, Petitioner states, "I thought everything was paid and I had a new loan payment. I do not understand what this is. I know I paid off the old loan with the Bank and

now I receive this. Please tell me what this is for.” *Petitioner’s Hearing Request (Hrg. Req.)*, filed August 23, 2017. In response, the Court issued a *Notice of Docketing* to Petitioner, on August 23, 2017, in which Petitioner was informed that, “**Documents relating to this alleged debt are not in the possession of this Court. Petitioner may request copies of these documents by writing to: Cheryl Dobert, U.S. Department of Housing and Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY 12203.**” However, no evidence exists in the record that Petitioner either requested copies of such documents or provided documentary evidence in support of his claim, nor has he demonstrated that HUD’s Note was otherwise paid in full.

For Petitioner not to be held liable for the full amount of the subject 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 addition, this Court has maintained that “[i]f satisfaction of a senior deed of trust prevents a junior trust holder from enforcing a junior trust deed on the same real property, the junior trust holder may collect the debt, now unsecured, by initiating collection efforts based on the obligations in the loan note.” Mitchell and Rosalva Fraijo, HUDBCA No. 99-C-CH-Y200 at 3 (March 20, 2000); John Bilotta, HUDBCA No. 99-A-CH-Y258 (December 29, 1999) (citing Kimberly S. (King) Thede, HUDBCA No. 89-4587-L74 (April 23, 1990)).

In this case, Petitioner has failed to produce sufficient evidence of a written release from HUD that discharges Petitioner for the debt associated with the Note. He has also failed to produce sufficient evidence of valuable consideration paid to HUD in satisfaction of the subject debt that would otherwise render the subject debt unenforceable. The Subordinate Note herein 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 became due and payable when the borrower paid in full all amounts due under the primary mortgage. *Sec’y. Stat.*, Ex. 2 ¶ 4(A)(i). On or about July 19, 2016, Petitioner’s primary mortgage was paid in full and consequently triggered the timeline for the Subordinate Note to become due. Without evidence from Petitioner to prove that the due debt is already paid, Petitioner’s contractual obligation to pay the Note remains intact.

Based on a review of the existing record, this Court is unable to determine the credibility of Petitioner’s claim in the absence of evidence from the Petitioner that either refutes or rebuts what the Secretary has offered. Therefore, the Court must find that Petitioner’s claim fails for lack of proof.

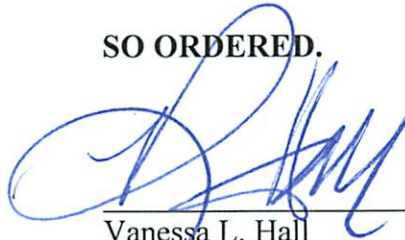
ORDER

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 of \$ \$525.00 per month, which will liquidate the

debt in three years as recommended by the Federal Claims collection, or 15% of Petitioner's disposable pay.

SO ORDERED.



Vanessa L. Hall
Administrative Judge