

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

In the Matter of:

Alfred Lyons,

Petitioner.

17-VH-0186-AG-064

721010244

February 27, 2019

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* ("Hearing Request") filed by Alfred Lyons ("Petitioner,") on August 29, 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. 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 30, 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 October 2, 2017, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file a statement and documentary evidence in support of his position that the debt does not exist. 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 3720A, because of a defaulted loan that was insured against non-payment by the Secretary.

On or about September 10, 2015, Alfred Lyons ("Petitioner") executed and delivered to the Secretary a Promissory Note ("Note") in the amount of \$5,419.66. The Note secured a Partial Claim Subordinate Mortgage (Mortgage) held by the Secretary. *Secretary's Statement*, Ex. 1, Note.

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. *Secretary's Statement*, Ex. 2, *Declaration of Brian Dillon*¹ (*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 October 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." *Secretary's Statement*, Ex. 1, ¶ 3.

On or about September 8, 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. *Secretary's Statement*, Ex. 2, *Dillon Decl.*, ¶ 4. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Secretary's Statement*, Ex. 2, *Dillon Decl.*, ¶ 4-5.

A Notice of Intent to Initiate Administrative Wage Garnishment dated July 27, 2017, was mailed to Petitioner at her last-known address. *Secretary's Statement*, Ex. 2, *Dillon Decl.*, ¶ 4-5. Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$5,419.66 as the unpaid principal balance as of August 31, 2017;
- b. \$27.06 as the unpaid interest on the principal balance at 1.0% per annum through August 31, 2017;
- c. \$83.04 as the unpaid penalties and administrative costs as of August 31, 2017; and
- d. interest on said principal balance from September 1, 2017, at 1.0% per annum until paid.

Secretary's Statement, Ex. 2, *Dillon Decl.*, ¶ 4-5.

HUD proposes a debt repayment schedule of \$88.62 bi-weekly, or an amount equal to 15% of Petitioner's disposable income. *Sec'y. Stat.*, ¶ 7, Ex. 2, ¶ 9.

DISCUSSION

Petitioner does not dispute the amount of the debt. Instead, Petitioner challenges the existence of

¹ Brian Dillon is Director of Asset Recovery Division for the U.S. Housing and Urban Development.

the debt because he alleges that the subject debt has already been paid off by the Alpha Title Company on Petitioner's behalf. Along with his *Hearing Request*, Petitioner offered into evidence copies of a *Pay Off Letter* for the debt owed to Planet Home Lending, dated August 29, 2016, and a *File Ledger* that reflected a zero balance for the loan balance owed to Planet Home Lending. *Hearing Request*, Attachments.

After reviewing Petitioner's documentary evidence, the Court has determined that the evidence is insufficient as proof that the subject debt does not exist or is unenforceable. For Petitioner not to be held liable for the full amount of the debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation to HUD, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986).

The evidence introduced by Petitioner fails to support his contention that the subject debt does not exist because neither document shows that Petitioner was released from his contractual obligation to pay this debt. First, the language in the *Payoff Letter* refers only to a debt that paid off what was owed to Planet Home Lending, not to HUD. Second, the *Payoff Letter* does not state that Petitioner was released from the subject debt. In a case like this one, the onus falls on Petitioner to produce evidence of a written release directly from HUD that specifically states that Petitioner has been discharged from the subject debt, or otherwise provide evidence that proves valuable consideration has been paid in satisfaction of the subject debt. Neither occurred in this case so, accordingly, the Court finds Petitioner's claim fails for lack of proof.

The Secretary's right to collect the alleged debt in this case emanates from the terms of the Note, not from the terms of a payoff letter to the primary lender or a file ledger. See Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). The title company's *Payoff Letter* does not provide sufficient evidence that Petitioner has been released from the subject debt. Because Petitioner has failed to produce evidence of a written release from HUD for his obligation to pay the subject debt, or evidence of valuable consideration paid by Petitioner to HUD in satisfaction of the subject debt, the Court finds that Petitioner has failed to meet his burden of proof to successfully refute or rebut the evidence presented by the Secretary.

ORDER

Based on the foregoing, the Court finds that the debt that is the subject of this proceeding exists and is 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 15% of Petitioner's disposable income.

SO ORDERED.



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.