

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

In the Matter of	:	
	:	
	:	18-AM-0015-AG-012
Robin Mouis,	:	
	:	
	:	721008888
	:	
Petitioner,	:	June 11, 2019
	:	

DECISION AND ORDER

On or about August 23, 2017, Robin Mouis, (“Petitioner”) filed a Request of Hearing concerning the amount, and enforceability of an alleged debt owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishments as a mechanism for the collection of debts owed to the United States government.

The Secretary of HUD has designated the administrative judges of this Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts using administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81(b).

BACKGROUND

On July 11, 2012 Petitioner sought financial assistance from HUD to avoid possible mortgage foreclosure by Petitioner’s FHA insured mortgage, which was the holder of Petitioner’s primary mortgage note (“Primary Note”). HUD loaned the Petitioner the sum of \$38,599.10 and in exchange Petitioner executed the Note in favor of the Secretary. (See Secretary’s Statement (“Sec’y Stat.”), ¶ 3; Exh. 1, Declaration of Brian Dillion, Director, HUD Asset Recovery Division, ¶4 (“Dillon Decl.”)). Petitioner executed and duly delivered a subordinate note (“Note”), evidencing this loan to HUD. (See Sec’y Stat., Exh. 2, Note, signed by Robin Mouis on p. 2 and dated July 11, 2012).

Under the Note’s terms, Petitioner was to pay the principal amount of the unpaid balance until the Note was paid in full. (See Sec’y Stat., Exh. 2 ¶ 2). The Note cited specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable – one of which was when Petitioner has paid in full all amounts due under the primary note insurance by the Secretary. (See Sec’y Stat. ¶ 5; Exh. 1, Dillion Decl., ¶ 4).

On or about May 28, 2015, the FHA Insurance on the first mortgage was terminated, as the lender indicated the mortgage was paid in full. (Exh. 1, Dillion Decl. ¶ 4). HUD has

attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. (See Sec'y Stat., Exh. 1 ¶ 5).

The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$38,599.10 as the unpaid principal balance as of October 5, 2017;
- b) \$385.80 as the unpaid interest on the principal balance at 1% per annum through October 5, 2017; and
- c) \$2,151.06 as the unpaid penalties and administrative costs as of October 5, 2017; and
- d) Interest on said principal balance from October 6, 2017 at 1% per annum until paid

(See Sec'y Stat., ¶ 7; Exh. 1, Dillion Decl., ¶ 5)

The U.S. Department of Treasury's ("Treasury") records indicate a Wage Garnishment Withholding order was issued to Petitioner's Employer on August 14, 2017. (See Exh. 1, Dillion Decl., ¶ 9). The record shows two garnishment payments had been transmitted to HUD from Treasury, which are reflected in the amounts above. Id. One garnishment of \$150.67 on October 10, 2017 had not yet been sent to HUD, which is not reflected in the amounts above. Id.

On July 14, 2017, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") was sent to Petitioner. (See Sec'y Stat., ¶ 8; Exh. 1, Dillion Decl., ¶ 6). Under 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was given the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. (See Sec'y Stat., ¶ 9; Exh. 1, Dillion Decl., ¶ 7). Petitioner has not entered into a written repayment agreement in response to the Notice. Id.

DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. (See 31 C.F.R. § 285.11(f)(8)(i)). Petitioner thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. (See 31 C.F.R. § 285.11(f)(8)(ii)). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause undue hardship to Petitioner, or that the alleged debt is legally unenforceable. Id.

As evidence of Petitioner's indebtedness, the Secretary has filed the Secretary's Statement (Sec'y Stat.) along with the Sworn Declaration (Exh. 1, Dillion Decl.) by Brian Dillon, Director, Asset Recovery Division; and a copy of the Note. Accordingly, the Court finds that the Secretary has met the initial burden of proof.

At issue, Petitioner claims the debt is not enforceable because U.S. Bank and/or the Secretary are obligated to pursue foreclosure action against Petitioner before further collection action can be taken. (See Petitioner's Answer and Defenses to Secretary's Claim that Debt is

Enforceable (“Petitioner’s Answer”), ¶ 6). Petitioner further argues that U.S. Bank acted with apparent authority on behalf of the Secretary and that U.S. Bank’s failure to pay the alleged debt is binding against the Secretary. (See Petitioner’s Answer, ¶ 10.).

Petitioner’s final argument is that the debt is unenforceable because the new home-owner was able to secure an FHA home loan. (See Petitioner’s Answer, ¶ 14). Petitioner states that if the Secretary’s loan had not been satisfied by the payoffs, then additional funds would not have disbursed to mortgage the property. *Id.* In addition, Petitioner states that the existence of an FHA home loan on the property combined with a closing statement that indicates a single outstanding lien on the property must mean the mortgage and lien are not due and/or have been released. (See *Petitioner’s Answer*, ¶ 15).

In response to *Petitioner’s Answer*, the Secretary was ordered to provide a *Secretary’s Supplemental Statement* (“*Sec’y Supp. Stat.*”) on or before June 29, 2018. The Supplemental Declaration of Brian Dillon (Exh. 2, “Supp. Dillon Decl.”), submitted by HUD, indicated that the Note dated July 11, 2012 does not include a provision that HUD is obligated to pursue foreclosure action against the Subordinate Mortgage before further action can be taken against Petitioner as charged by Petitioner. (See Exh. 2, Supp. Dillon Decl., ¶ 3). Further, Petitioner does not provide any evidence indicating that the Secretary was required to foreclose prior to taking action to collect the alleged debt in this case.

The Secretary further addresses Petitioner’s argument regarding U.S. Bank being an apparent agent of HUD. (See *Sec’y Supp. Stat.*, ¶ 5; Exh. 2, Supp. Dillon Decl., ¶ 4). HUD indicates that at no time did Petitioner’s primary mortgage lender, U.S. Bank, have authority to release HUD’s Note or any amount of the debt owed to the United States pursuant to the Note. (See *Sec’y Supp. Stat.*, ¶ 5). The evidence submitted in support of this is that the Note explicitly provides that HUD is the “Lender” and beneficiary thereunder, and there is no provision granting authority to U.S. Bank to act as HUD’s representative or agent. (See *Sec’y Supp. Stat.*, ¶ 5; Exh. 2, ¶ 4; Note, ¶ 1). Further, HUD indicates that the Note directs that payments due “shall be made at the US Department of HUD c/o Deval LLE, Westpoint 1, Suite 300, 1255 Corporate Drive, Irving, TX 75038 or any such other place as Lender may designate in writing by notice to Borrower”. (See *Sec’y Supp. Stat.*, ¶ 5; Exh. 2, ¶ 4; Note, ¶ 4).

Petitioner has not provided any evidence that she relied upon indications made by U.S. Bank that her debt was satisfied and/or that she was under the mistaken impression that the Note would be enforced by foreclosure against the home she sold. (See *Sec’y Supp. Stat.*, ¶ 7). Petitioner’s bald assertions are insufficient evidence to establish that HUD’s Note is not past due and enforceable against her. *Id.* (See *Nancy Brignoni*, HUDOA No. 10-H-NY-AWG11). Further, Petitioner has not provided evidence that there was full payment of the Note. *Id.*

The Petitioner also has not provided evidence of a release from HUD of her obligation to repay the Note. (See *Sec’y Supp. Stat.*, ¶ 8). In order for the debt to be extinguished, HUD must provide a release, in writing, that specifically discharges the debtor’s obligation, for valuable consideration accepted by the lender from the debtor, which would indicate intent to release. *Id.* (See *Franklin Harper*, HUDBCA No. 04-D-CH-AWG41 (March 23, 30050). (See *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)). (See *Cecil F. & Lucille Overby*,

HUDBCA No. 87-1917-G250 (December 22, 1986)). (See Jesus E. & Rita de los Santos, HUDBCA No. 86-1255-F262) (February 28, 1986)). Petitioner has provided no evidence that she received a release from HUD, and HUD holds that it never issued or authorized the issuance of any instrument or document to cancel, satisfy or release HUD's note. Id.

The idea that a third party should be responsible for the Note is, as the Secretary suggests, unreasonable, unjust, and entirely without merit. (See *Sec'y Supp. Stat.*, ¶ 7). Petitioner provides no legal authority or language in the Note that suggests a third party acquiring an FHA home loan vitiates the repayment obligation on a separate loan issued by the Secretary. (See *Petitioner's Answer*, ¶¶ 14-15).

The Petitioner has not provided evidence in support of her claims that the Note is not enforceable. Petitioner provided a Title Opinion Letter (Exh. 2), Survivorship Deed, Eastridge Subdivision Section Five document, and other documents none of which point to the conclusion that the Note is not enforceable.

Petitioner has failed to submit any documentary evidence to prove that Petitioner is not indebted to the Department. I therefore find that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

DETERMINING REPAYMENT

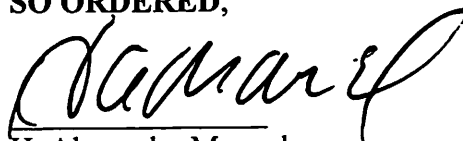
The Secretary has made efforts to access Petitioner's income information to determine a repayment schedule. Petitioner claimed that garnishment of her income would cause extreme financial hardship. (See *Sec'y Stat.* ¶ 10). However, after review of Petitioner's financial documentation, the Court determines that the proposed garnishment would not create hardship for the Petitioner. Id. (See Exh. 2, *Supp. Dillion Decl.*, ¶¶ 8-10). Therefore, the Secretary's proposed repayment schedule of \$132.76 biweekly is approved.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is

ORDERED that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. The Secretary is authorized to seek administrative wage garnishment in the amount of \$136.76 biweekly, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable income per month.

SO ORDERED,



H. Alexander Manual
Administrative Judge