

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

In the Matter of

LATONYAL GODFREY,

Petitioner,

:
:
: 18-AM-0248-AG-124
:
: 721012770
:
: September 12, 2019
:

DECISION AND ORDER

On or about September 17, 2018, Latonyal Godfrey, (“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 garnishment 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 or about June 1, 2015, 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. HUD loaned the Petitioner the sum of \$5,551.82 and, in exchange, Petitioner executed a promissory note in favor of the Secretary (“the Note”). (See Secretary’s Statement (“*Sec’y Stat.*”), ¶ 3; Exh. 2, Declaration of Kathleen Porter, Acting Director, HUD Asset Recovery Division, ¶4 (“Porter Decl.”). Petitioner executed and duly delivered a subordinate note (“Note”), evidencing this loan to HUD. (See *Sec’y Stat.*, Exh. 1, Note, signed by Latonyal Godfrey, dated June 1, 2015).

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. 1, ¶ 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 insured by the Secretary. (See *Sec’y Stat.* ¶ 4; Exh. 1, Porter Decl., ¶ 4).

On or about October 17, 2017, the FHA Insurance on the first mortgage was terminated, as the lender indicated the mortgage was paid in full. (See *Sec’y Stat.*, Exh. 2, Porter Decl. ¶ 4).

HUD has made attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. (*See Sec'y Stat.*, Exh. 2 ¶ 5).

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

- a) \$5,581.82 as the unpaid principal balance as of September 30, 2018;
- b) \$32.34 as the unpaid interest on the principal balance at 1% per annum through September 30, 2018; and
- c) \$369.55 as the unpaid penalties and administrative costs as of September 30, 2018; and
- d) Interest on said principal balance from October 1, 2018 at 1% per annum until paid

(*See Sec'y Stat.*, ¶ 7; Exh. 2, Porter Decl., ¶ 5)

On September 10, 2018, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") was sent to Petitioner. (*See Sec'y Stat.*, ¶ 8; Exh. 2, Porter 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, Porter 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 along with the Sworn Declaration (Exh. 2, Porter Decl.) of Kathleen Porter, Acting Director, Asset Recovery Division, as well as a copy of the Note. Accordingly, the Court finds that the Secretary has met his initial burden of proof.

Petitioner claims that she does not owe the debt claimed by the Secretary, and that the Secretary's claim is not enforceable. Petitioner states that

[she] sold this property and settled all debts regarding [the] property 5761 Pearson Place Forest Park . . . 80297 . . . [and that she] had to sign off on the checks that was to Flagstar bank and Urban Development. The partial claim security deed book number 10749, page 523 in the Amount of 5,551.82. [She has] attached the cancellation of security

deed. [She has] also included the email from the pay-off department listing that amount as included to pay-off the lien and mortgage. If there is something different I am not aware of please let me know. I sold the house 8-15-17 this is the first I have received.

Petitioner's Request for Hearing, dated September 17, 2018. Petitioner also filed a Cancellation of Security Deed purporting to evidence her pay-off of her debt to HUD under the Note.

In response to *Petitioner's Request for Hearing*, the Secretary states that

Petitioner provided a copy of a Cancellation of Security Deed, dated October 25, 2017, recorded by Flagstar Bank and indicating that Flagstar Bank had canceled its deed as paid in full. Accordingly, that document pertains namely and solely to Flagstar Bank's mortgage, which had been recorded in Clayton County, Georgia on April 26, 2012 in Book 10108 at Page 496. Petitioner's Cancellation of Security Deed. However, Petitioner has provided no evidence that HUD ever released its Note, which was recorded in Clayton County, Georgia on August 14, 2015 in Book 10749 at Page 523 . . . Further, the August 15, 2017 Settlement Statement that was provided by Petitioner indicates that \$78,614.31 was paid to Flagstar Bank, and \$16,977.33 was paid to Georgia Housing and Finance at closing of the sale of Petitioner's home. The Settlement Statement includes no indication that HUD was paid out of the sale proceeds.

Sec'y Stat., ¶9. (citations omitted.) A review of the Cancellation of Security Deed document and the Settlement Statement 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. Dillion 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.

Based on the documents provided by both parties, the Court is inclined to agree with the Secretary's argument and evidence. There is no evidence that Petitioner paid her \$5,581.82 indebtedness to HUD per the terms of the Note, or that the Note was paid by any other party on her behalf.

An element of confusion in the evidence has been created by the email apparently sent by settlement counsel on August 14, 2017 regarding the sale of Petitioner's house. That email, sent from Ramona Garvin to Walt Mabrey, specifically states with respect to the "Partial Claim Security Deed from Latonyal Godfrey to MERS as nominee for Secretary of Housing and Urban

Development, of record at Deed Book 10749, Page 523 in the amount of \$5,551.82; This security deed is accounted for in, and will be satisfied from the above attached payoff of \$78,614.31." Taken at face value, this account suggests that Petitioner's indebtedness of \$5,551.82 may have been included in Petitioner's pay-off figure of the Flagstar Bank note at settlement. However, this does not mean that that payment found its way to HUD. The Settlement Statement, itself, does not detail any payment to HUD, and Petitioner provides no other documentary proof that the \$5,551.82 sum was paid to HUD.

The Note explicitly provides that HUD is the "Lender" and beneficiary thereunder, and there is no provision granting authority to Flagstar Bank to act as HUD's representative or agent. (*See Sec'y Stat.*, ¶ 9, Exh. 1, Note, ¶ 4(B)). Further, the Note directs that payments due "shall be made at the Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington DC 20410 or any such other place as Lender may designate in writing by notice to Borrower." *Id.*

Petitioner has not provided any evidence that she relied upon written or oral statements from HUD that her debt was satisfied. Petitioner's bare assertions that she does not owe the debt are insufficient evidence to establish that HUD's Note is not past due or enforceable against her. Further, Petitioner has not provided any other evidence that she made full payment of the Note to HUD.

Further, Petitioner has not provided evidence of a written release from HUD of her obligation to repay the Note. 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, 2005)). (*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 maintains that it never issued or authorized the issuance of any instrument or document to cancel, satisfy or release HUD's note. (*Sec'y Stat.*, ¶9).

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

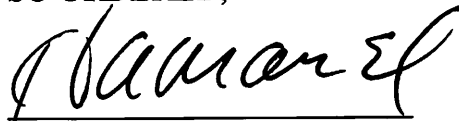
The Secretary has made efforts to access Petitioner's income information to determine a repayment schedule. Petitioner has not filed documentary evidence of her financial circumstances. Accordingly, the Court determines that the proposed garnishment would not create hardship for the Petitioner. Therefore, the Secretary's proposed repayment schedule of \$141.44 biweekly is hereby authorized.

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 \$141.44 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

APPEAL NOTICE: You have the right to move for reconsideration of this case before the HUD Office of Hearings and Appeals within 20 days of the date of this ruling or decision; or, thereafter, to reopen this case. Ordinarily, such motions will not be granted unless you can demonstrate that you have new evidence to present **that could not have been previously presented**. You may also appeal this decision to the appropriate United States District Court. For wage garnishments cases, See 24 C.F.R. § 17.81, 31 C.F.R. § 285.119f), and 5 U.S.C. 701, *et seq.* For administrative offset cases, See 24 C.F.R. § 17.73(a), and 5 U.S.C. § 701, *et seq.*