

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

In the Matter of:

Cindy Newman,

Petitioner.

18-VH-0003-AG-003

721009656

June 24, 2019

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing* ("Hearing Request") filed on October 2, 2017, by Petitioner Cindy Neman ("Petitioner") concerning the existence and 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. This court hearing is conducted in accordance with the procedures set forth in 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).

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f)(4), on October 4, 2017, this Court stayed the issuance of an administrative wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order, and Stay of Referral* ("Notice of Docketing") at 2. On November 3, 2017, Petitioner filed documentary evidence to supplement her position and *Hearing Request*. Thereafter, on November 6, 2017, the Secretary filed a *Secretary's Statement* ("Sec'y. Stat."), along with documentary evidence, in support of his position. 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.

In this case, on February 7, 2014, Petitioner sought financial assistance from HUD to avoid possible foreclosure of her mortgage by her primary lender, Wells Fargo ("primary lender"). *Sec 'y. Stat., Declaration of Brian Dillon*¹ ("*Dillon Decl.*") ¶ 4. HUD loaned petitioner the sum of \$15,738.58 to help her avoid defaulting on her mortgage. *Sec 'y. Stat.*, Ex. 1. In exchange for the loan, Petitioner executed and delivered to the Secretary a Partial Claim Subordinate Note ("Note"), evidencing this loan to HUD. *Id.*

Under the terms of the Note, Petitioner was to pay the principal payment amount of the unpaid balance on the Note until it was paid in full. *Id.* The Note cites specific events that cause the remaining unpaid balance of the debt to become immediately due and payable. *Id.* One of which was when Petitioner's underlying mortgage to her primary lender was paid in full. *Sec 'y. Stat.*, ¶ 4. Ex. 1, ¶ 3(A)(i).

On or about July 23, 2015, Petitioner's primary lender notified HUD that Petitioner paid in full her underlying mortgage with Wells Fargo. *Sec 'y. Stat.*, ¶ 5, *Dillon Decl.*, ¶ 4. This automatically terminated the Federal Housing Administration Insurance and pursuant to provision ¶ 3(A)(i) of the Note, required Petitioner to pay HUD the full amount owed under the Note. Petitioner has failed to make payment on the Note. *Dillon Decl.*, ¶ 5. Consequently, Petitioner's debt to HUD is delinquent. *Id.* Therefore, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$15,738.58 as the unpaid principal balance as of October 19, 2017;
- (b) \$104.88 as the unpaid interest on the principal balance at 1% per annum through October 19, 2017;
- (c) \$784.54 as the unpaid penalties and administrative costs as of October 19, 2017;
- (d) \$35.33 as the unpaid administrative costs through October 19, 2017; and
- (e) Interest on said principal balance from October 20, 2017, at 1% per annum until paid.

Sec 'y. Stat., ¶ 7, *Dillon Decl.*, ¶ 5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated June 14, 2017 ("Notice") was sent to Petitioner. *Sec 'y. Stat.*, ¶ 6.

DISCUSSION

Petitioner claims she is not liable for the alleged debt because she paid of her mortgage with Well Fargo. *Petitioner's Request for Hearing*. As support, Petitioner introduced into evidence copies of a Deed of Release and Full Reconveyance, a letter faxed to Wells Fargo requesting the Letter of Satisfaction Mortgage, and HUD-1 Settlement Statement from the sale of

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

her home. *Petitioner's Documentary Evidence*. However, the HUD-1 Settlement Statement shows that the only debt the Petitioner paid was the debt she owed to the primary lender, Wells Fargo. Id. There is nothing in the Settlement Statement that indicates that funds were set aside to pay off the Note owed to HUD. Id.

The Court is not convinced that Petitioner has met her burden of proof. The Secretary's right to collect the alleged debt stems from the terms of the Note, not from the terms of payoff statements from the primary lender. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). After examination of the documentary evidence introduced, this Court has determined that the evidence introduced by the Petitioner fails to prove that the subject debt is unenforceable. Although Petitioner's evidence is proof that the primary mortgage to Wells Fargo was satisfied, there is no indication that the subject debt owed to HUD was also satisfied.

For Petitioner not to be held liable for the full amount of the subject debt, there must be either 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). Petitioner has not provided any evidence demonstrating that HUD issued a release of its lien or that she paid her debt owed to HUD. Instead, Petitioner's evidence demonstrates full payment of the primary mortgage and thus strengthens the Secretary's allegations.

This Court has consistently maintained that "assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due and legally enforceable." Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). In this case, Petitioner failed to introduce evidence that proved she was discharged from the debt associated with the Note. Therefore, the Court must find that the evidence presented by the Petitioner is insufficient and that Petitioner remains contractually obligated to pay the debt so claimed by the Secretary.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury on October 4, 2017 for an 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 in the amount so claimed by the Secretary.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.