

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

In the Matter of:

**Catrina Ruiz aka Pegueros,**

Petitioner.

18-VH-0004-AG-004

721010124

April 22, 2019

**DECISION AND ORDER**

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* ("Hearing Request") filed by Catrina Ruiz aka Pegueros ("Petitioner,") on October 3, 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"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720A), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts allegedly 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 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 October 4, 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 November 6, 2017, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to comply with the Court's Orders to file sufficient documentary evidence in support of his position that the debt does not exist. 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.

On or about March 23, 2011, Cesar Orozco and Catrina Ruiz ("Petitioner") executed and delivered to the Secretary a Subordinate Note ("Note"), in the amount of \$6,467.64. The Note secured a Subordinate Mortgage held by the Secretary. *Secretary's Statement (Sec'y. Stat.)*, ¶ 2, Ex. 2. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured first mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat.*, ¶ 3, Ex. 1, *Declaration of Gary Sautter (Sautter Decl.)*,<sup>1</sup> ¶ 4.

By terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs (4)(A)[o]n April 1, 2041 or, if earlier, when the first of the following events occurs: (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. *Sec'y. Stat.*, ¶ 4, Ex. 1, *Sautter Decl.* ¶ 4.

On or about August 2, 2016, the Petitioner's first mortgage was paid in full and the FHA mortgage insurance was terminated. *Sec'y. Stat.*, ¶ 5, Ex. 1, *Sautter Decl.*, ¶ 4. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.*, ¶ 6, Ex. 1, *Sautter Decl.*, ¶ 5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated June 27, 2017, was mailed to Petitioner. *Sec'y. Stat.*, ¶ 8, Ex. 1, *Sautter Decl.* ¶ 6.

Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$4,599.74 as the unpaid principal balance as of October 5, 2017;
- b. \$26.81 as the unpaid interest on the principal balance at 1% per annum through October 5, 2017;
- c. \$94.04 as the 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. Exhibit 1, 1 5.

*Sec'y. Stat.*, ¶ 7; Ex. 1, *Sautter Decl.*, ¶ 5.

Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD, in accordance with 31 C.F.R. 285.11(e)(2)(ii). However, Petitioner has failed to do so. *Sec'y. Stat.*, ¶ 7; Ex. 1, *Sautter Decl.*, ¶ 5. Treasury's records indicate that a Wage

---

<sup>1</sup> Gary Sautter is the Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

Garnishment Order was issued to Petitioner's employer on August 29, 2017. *Sec 'y. Stat.*, Ex. 1, *Sautter Decl.*, ¶ 8.

Based upon issuance of the Wage Garnishment Order, Petitioner's pay was garnished on October 3, 2017 in the amount of \$218.19, and on October 10, 2017 in the amount of \$131.39. The \$218.19 garnishment is reflected in the outstanding balance claimed by HUD. The second garnishment has not yet been received by HUD according to the Sautter Declaration. *Sec 'y. Stat.*, ¶ 13, Ex. 1, *Sautter Decl.*, ¶ 9.

HUD's efforts to obtain Petitioner's current income information were unsuccessful. The Secretary proposes a repayment schedule of \$131.39 per month, or an amount equivalent to 15% of Petitioner's disposable income. *Sec 'y. Stat.*, ¶ 13, Ex. 1, *Sautter Decl.*, ¶ 9.

### DISCUSSION

Petitioner does not dispute the amount of the debt. Instead, Petitioner challenges the existence of the debt because she contends that the subject debt is the responsibility of her ex-spouse pursuant to the terms of a divorce decree. Along with her *Hearing Request*, Petitioner offered as evidence copies of a *Property Order Attachment to Judgement (Property Judgement)* along with a *Notice of Entry for Judgement on the Dissolution of Marriage (Judgement on the Dissolution of Marriage)* allegedly issued by the San Diego Superior Court on June 23, 2015. *Hearing Request*, Attachments.

After reviewing Petitioner's documentary evidence, the Court has determined that the evidence submitted by Petitioner does not meet the burden of proof that the subject debt does not exist and 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 her contention that the subject debt does not exist and is solely the responsibility of her ex-spouse. Petitioner's copies of the *Property Judgement* and the *Judgement on the Dissolution of Marriage* identified her former spouse, "Cesar A. Orozco," as the one who was adjudged to receive as an asset the property that is associated with the subject debt. *Hearing Request*, Attachment. However, Petitioner did not offer additional documentation to prove that HUD had directly released Petitioner from her responsibility for the subject debt. Petitioner instead relies on her specific allegation of property distribution by divorce as a basis for not enforcing the subject debt. This allegation alone, even with the *Judgement on the Dissolution of Marriage*, insufficient as evidence that Petitioner has been released from the subject debt because HUD was not a party to that action.

In this case, Petitioner is jointly and severally liable with her former spouse for repayment of the debt according to the terms of the *Note* and, consequently, the Secretary may proceed against any co-signer for the full amount of the debt. *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003). The *Judgement on the Dissolution of Marriage* herein only determines the rights and liabilities between Petitioner and her former spouse, but not the rights and liabilities between Petitioner and third parties such as HUD. *Kimberly S. Kim. (Thiedel)*, HUDBCA No. 89-4587-L74 (April 23, 1990). Such a document purporting to release Petitioner from her joint-

obligation by dissolution of marriage does not affect the claims of an existing creditor unless the creditor was a party to the action. Janet T. Rodocker, HUDBCA No. 00-A-CH-AA17 (May 22, 2000). While Petitioner may be divorced from her former spouse, neither the Secretary nor the lender was a party to that divorce action.

As a recourse, Petitioner may seek to enforce, in the state or local court, the *Judgement on the Dissolution of Marriage* that was granted to her former spouse so that Petitioner may recover from him the monies paid by her to HUD in satisfaction of the subject debt. See William Holland, HUDBCA No. 00-A-NY-AA83, dated Oct. 12, 2000; Michael York, HUDBCA No. 09-1-1-CH-AWG36 dated June 26, 2009, at 3. This course of action would of course be separate and distinct from this proceeding. In this case however, without proof of a written release directly from HUD to Petitioner, Petitioner remains contractually obligated to pay the subject debt as co-signor on the Note.

### **ORDER**

Based on the foregoing, I find 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 issued on October 4, 2017 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 the proposed repayment schedule of \$131.39 per month, or an amount equivalent to 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 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.