

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

In the Matter of:

**Matthew Grotegeers,**

Petitioner.

18-VH-0014-AG-011

1701081870A

August 22, 2018

**DECISION AND ORDER**

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (“Hearing Request”) filed by Matthew Grotegeers (“Petitioner”) on October 16, 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”).

Pursuant to 31 C.F.R. § 285.11(f)(4) on October 18, 2017, the Court stayed the issuance of a wage withholding order until the issuance of this written decision. *See Notice of Docketing, Order, and Stay of Referral* (“Notice of Docketing”) at 2. On November 3, 2017, the Secretary filed a *Secretary’s Statement* along with documentation in support of her position. On December 4, 2017, Petitioner filed his *Response to Secretary’s Statement* along with documentary evidence. This case is now ripe for review.

**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 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.

**FINDINGS OF FACT**

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, as a result of a defaulted loan that was insured against non-payment by 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 allegedly owed to the United States government.

On or about March 31, 2014, Petitioner executed and delivered a Subordinate Note (“Note”) to the Secretary in the amount of \$8,269.62. *See Sec’y Stat.* ¶ 4; Ex. B, Note ¶ 4(A)(i).

HUD advanced funds to Petitioner's FHA insured mortgage lender as means of preventing the lender from foreclosing. *See Sec'y Stat.*, ¶ 3; Ex. A, *Declaration of Brian Dillon* ("Dillon Decl."). In exchange for such funds, Petitioner executed the Note in the favor of the Secretary. *See Sec'y Stat.*, ¶ 4. On or about May 4, 2016, the primary note and mortgage was paid in full, and the FHA mortgage insurance on the primary note was terminated. *See Sec'y Stat.*, ¶ 5; *Dillon Decl.* ¶ 4. Because the primary note and mortgage were paid in full, and the FHA mortgage insurance was terminated, the Note became immediately due and payable, pursuant to the terms of the Note. *See Sec'y Stat.* ¶ 5; Ex. B, Note.

HUD's attempts to collect this alleged debt from Petitioner have been unsuccessful. *See Sec'y Stat.*, ¶ 9; *Dillon Decl.*, ¶ 5, 6, and 7. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$8,269.62 as the unpaid principal balance as of September 30, 2017;
- b) \$55.12 as the unpaid interest on the principal balance at 1% per annum through September 30, 2017;
- c) \$533.16 as the unpaid penalties and administrative costs through September 30, 2017; and
- d) interest on said principal balance from October 1, 2017, at 1% per annum until paid.

*See Sec'y Stat.*, ¶ 9; *Dillon Decl.*, ¶ 5.

On August 22, 2017, a *Notice of Intent to Initiate Wage Garnishment Proceedings* ("Notice") was mailed to Petitioner. *See Sec'y Stat.*, ¶ 10; *Dillon Decl.*, ¶ 6. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement. Petitioner did not enter into a repayment agreement or pay the debt in full in response to the *Notice*. *Id.*

The Secretary proposes a repayment schedule of \$250.00 per month or an amount equal of 15% of Petitioner's disposable income. *See Sec'y Stat.*, ¶ 18.

## DISCUSSION

Petitioner contends, in general, that he does not owe the debt amount claimed by the Secretary and should not be responsible for the remaining balance of the loan. *See Pet'r's Resp.* More specifically, Petitioner claims that he was "never delinquent on the mortgage in question," and as such, was not sent foreclosure notices. *See Pet'r's Resp.*, ¶ 1. Petitioner states that he paid the lender, U.S. Bank, in full for the mortgage, and the lender "should have been responsible for sending any and all funds received" to HUD. *See Pet'r's Resp.*, ¶ 7. Petitioner states that given his payments to U.S. Bank, the Secretary should seek payments on the loan directly from U.S. Bank. *See Pet'r's Resp.*, ¶ 14. Petitioner concludes that even if he owed a balance, his entire loan amount was paid in full when the real property was sold. *See Pet'r's Resp.*, ¶ 4, 13.

To support his position, Petitioner produces a copy of a Deed of Release, dated June 8, 2016, that shows the grant of real property to the Missouri Housing Development Commission in the amount of \$4,035.03. *See Pet'r's Resp.*, Ex. 2. Alternatively, Petitioner includes his most

recent paystub and asks that the Court find Petitioner responsible only for the unpaid principal balance. *See Pet'r's Resp.*, ¶ 15, 16; Ex. 1. Petitioner points to "misrepresentation" and delay by his lender, U.S. Bank, as the cause for the additional fees and interest on the principal balance that he otherwise would not have accrued. *See Pet'r's Resp.*, ¶ 16.

In response, the Secretary contends that Petitioner is mistaken when he claims that the loan balance was paid in full. The Secretary acknowledges that the Deed of Release, cited by the Petitioner in the amount of \$4,035.03, was issued by the Missouri Housing Development Commission. But, that Deed of Release bears no relationship to Petitioner's indebtedness because the Deed of Release was not issued by HUD. *See Sec'y Stat.*, ¶ 15. As support, the Secretary produced a copy of the Note signed by Petitioner, along with a copy of a sworn declaration from the Director of HUD's Asset Recovery Division in which the debt amount owed by Petitioner was substantiated. *See Sec'y Stat.*, Ex. B; *Dillon Decl.*, ¶ 5.

In the Note, Petitioner has already agreed to make a payment to HUD in the event that "the borrower has paid in full all amounts due under the primary Note and related mortgage, deed of trust or similar Security Instruments issued by the Secretary." *See Sec'y Stat.*, Ex. B, Note ¶ 4(A)(i). Furthermore, the Note contained specific instructions on how and where payment should be made to the Secretary by Petitioner, and those instructions were unambiguous. *Id.* at Note ¶ 4(B). The Secretary contends further that Petitioner has not presented sufficient evidence of valuable consideration or a release accepted by HUD. *See Sec'y Stat.*, ¶ 17.

For Petitioner to prove that a debt owed to the Secretary has been satisfied, there must be either a written release from HUD or evidence of valuable consideration accepted by HUD from the Petitioner. *See Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). The documents provided by the Petitioner do not reflect payment of the HUD debt. *See Pet'r's Resp.*, Ex. 2. This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and is unenforceable." *See Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), *citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). In this case, Petitioner failed to meet his burden of proof because he did not produce evidence to prove that he was released from the subject, or produce evidence of valuable consideration accepted by HUD in exchange for the debt owed. As a result, the Court finds Petitioner's claim fails for lack of proof.

Next, Petitioner requests the Court to consider payment of the unpaid principal balance only, exclusive of the unpaid interest and penalties. The Court has maintained that "[w]hen the principal balance is valid and legally enforceable, so too is the interest that attaches to it." *See Thomas Herrin*, HUDBCA No. 88-2848-H372 (Dec. 9, 1987). Petitioner herein did not produce evidence to explain why he made this request so the Court is not equipped to make a determination without such evidence. Again, based on the record of evidence, the Court finds that Petitioner's claim fails for lack of sufficient proof.

## ORDER

Based on the foregoing, Petitioner remains contractually obligated to pay the subject debt so claimed 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 of \$250.00 per month or an amount equal of 15% of Petitioner's disposable income.

SO ORDERED.



Vanessa L. Hall  
Administrative Judge

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**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 this *Decision and Order*, and shall be granted only upon a showing of good cause.