

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

In the Matter of:

Tammie Fike,

Petitioner.

18-VH-0025-AG-015

721007453

May 7, 2019

DECISION AND ORDER

On October 26, 2017, Tammy Fike (“Petitioner”) filed a *Request for a Hearing (Hearing Request)*, along with documentary evidence, concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“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 26, 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*”), at 2. On November 27, 2017, the Secretary filed his *Statement* along with documentation in support of his position. The Court then issued an *Order for Clarification* to the Secretary on February 21, 2018 to which the Secretary responded on March 21, 2018. On June 6, 2018, the Court issued to Petitioner an *Order to Show Cause (Show Cause Order)* in which Petitioner was notified that the existing record of evidence “proves only that the primary mortgage was paid in full but fails to substantiate full payment of the subject debt to HUD.” Petitioner was then ordered to file additional evidence that “all or part of the alleged debt in this case

is not past due or is unenforceable based on a written release issued from HUD for the subject debt, or otherwise show cause why this decision should not be rendered in favor of the Secretary." (Emphasis in original). To date, Petitioner has failed to comply with the *Show Cause Order*. 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 June 27, 2004, Tammie M. Pike ("Petitioner") and Christopher A. Pike executed and delivered to the Secretary a Subordinate Note ("Note"), in the amount of \$10,070.91. The Note secured a Subordinate Mortgage held by the Secretary. *Sec'y. Stat.* ¶ 2, Ex. 1, *Declaration of Brian Dillon* ("Dillon Decl."), ¹ ¶ 4.

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, *Dillon Decl.*, ¶ 4. In exchange for these funds, Petitioner executed the Note in favor of the Secretary. *Id.*

By terms of the Note, the amount to be repaid thereunder becomes due and payable "(4)(A)[o]n February 1, 2014 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. 2.

On or about March 23, 2012, the FHA mortgage insurance on Petitioner's primary mortgage was terminated as the lender indicated the primary note and mortgage was paid in full. HUD attempted thereafter to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.* ¶ 6, Ex. 1, *Dillon Decl.* ¶ 5.

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

- a. \$8,393.00 as the unpaid principal balance as of October 31, 2017;
- b. \$13.98 as the unpaid interest on the principal balance at 1 % per annum through October 31, 2017;
- c. \$486.82 as the unpaid penalties and administrative costs as of October 31, 2017; and,
- d. interest on said principal balance from November 1, 2017 at 1 % per annum until paid.

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

¹ Mr. Dillon is the Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner on or about February 20, 2017. *Sec'y. Stat.* ¶ 8, Ex. 1, *Dillon Decl.*, ¶ 6.

In accordance with the Notice, a Wage Garnishment Withholding Order was sent to Petitioner's employer, and two garnishments have been transmitted to HUD. *Sec'y. Stat.* ¶ 8, Ex. 1, *Dillon Decl.*, ¶ 9. Those payments have been credited to Petitioner and deducted from the unpaid balance previously noted. *Id.*

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 debt repayment schedule of \$ 57.24 per week, or an amount equal to 15% of Petitioner's disposable income, should updated information become available. *Sec'y. Stat.* ¶11, Ex. 1, *Dillon Decl.*, ¶ 10.

DISCUSSION

Petitioner first contends that she does not owe the subject debt so claimed by the Secretary because it was paid in full. More specifically, Petitioner claims:

We have refinanced this mortgage and have sold the property. Nothing ever showed up on Title search. Our understanding was that this debt was paid through our refinancing and [o]r selling the home. Our understanding is that [,] with what we had sent and [the] new payment plan [,] that [t]his [debt] rolled into our mortgage. Not a separate loan. We have also sent documentation where this was dismissed and taken off the [b]ooks through the court. After looking through all the documentation; several figures, data, releases, etc. [h]ave been done to this Mortgage Loan.

Petitioner's Hearing Request, at 1.

As support, Petitioner offered into evidence copies of a letter to Petitioner from Aurora Loan Services with supporting documentation and her response; *Petitioner's Leave Request Application*, dated September 8, 2001, seeking leave under the Family Medical Leave Act (FMLA), along with documentation and her employer's response dated January 28, 2003; a letter from Aurora Loan Services' Foreclosure Department, dated November 24, 2003, along with supporting documentation and response; Petitioner's submission of the HUD Subordinate Note she received requesting her signature (later executed by Petitioner on June 27, 2004). See *Petitioner's Hearing Request*, Attachments; and *Sec'y. Stat.* ¶ 2, Ex. 1, *Declaration of Brian Dillon* ("Dillon Decl."), ¶ 4.

In response, the Secretary states that "Petitioner's claim is not supported by any evidence that controverts the existence, amount or enforceability of the debt. To the contrary, Petitioner executed the Note (Exhibit 2), and she has failed to produce any evidence that the funds borrowed were ever repaid to HUD or that she was otherwise released from her obligations pursuant to the

Note.” *Sec’y Stat.*, ¶ 10. The Secretary further claims that “Petitioner has filed no evidence that establishes the requirements of a valid release from HUD.” *Id.* As support for his position, the Secretary produced a copy of the Subordinate Note signed by Petitioner, along with a copy of a sworn declaration from the Director of HUD’s Asset Recovery Division substantiating the debt amount owed by Petitioner and also supporting that the primary mortgage was terminated upon full payment. *Sec’y Stat.*, Ex. 1, *Dillon Decl.*, ¶ 4; Ex. 2, Note, ¶ 4(A).

After reviewing the record of evidence, the Court has determined that the evidence introduced by Petitioner falls short of meeting her burden of proof that the subject debt no longer exists 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 show that Petitioner was directly released by HUD from her obligation to pay the debt herein. First, the letters and documentation from Aurora Loan Services offered by Petitioner fail to prove that Petitioner is no longer responsible for the subject debt. The letters instead address matters pertaining to the primary mortgage. Petitioner was informed much earlier in the proceeding that the evidence submitted was insufficient. The Court issued an *Order* to Petitioner “to file additional evidence that “all or part of the alleged debt in this case is not past due or is unenforceable *based on a written release issued from HUD for the subject debt....*” *Show Cause Order*, dated June 6, 2018. To date, despite the lapse of time, Petitioner has failed to comply with the Court’s *Order*.

For the Petitioner to prevail in this case, she must produce evidence that shows a written release directly from HUD specifically stating that HUD has discharged Petitioner from the subject debt, or otherwise proves that valuable consideration has been paid in satisfaction of the subject debt. The Secretary’s right to collect the alleged debt in this case emanates from the terms of the Note, not from the terms of a Satisfaction of Mortgage for the primary mortgage that is not associated with the subject debt. See Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). Evidence pertaining to the satisfaction or refinancing of the primary mortgage is not relevant to the Court in deciding whether the subject debt is enforceable. Therefore, the Court finds that Petitioner’s claim fails for lack of sufficient proof and finds further that Petitioner remains obligated to pay the subject debt.

Petitioner next claims that she was not notified that she owed the subject debt. More specifically, Petitioner alleges:

We never received any documentation telling us that this we still owed this debt or that my paycheck was going to be garnished. This has just now showed up on our credit report and it is on our report twice for the same [l]oan with different figures. They have been taking money out of my pay check since August of 2015. When the new owner went sale this property it showed there was a lien. We gave them permission to talked to HUD.

The Court issued a *Notice of Docketing* on October 26, 2017 in which Petitioner was informed that, “Documents relating to this alleged debt are not in the possession of this Court. Petitioner

may request copies of these documents by writing to: Cheryl Dobert, U.S. Department of Housing and Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY 12203.” Petitioner has since had the opportunity for an extended period of time to obtain, from the referenced source, all information pertaining to matters related to the subject debt. The key indication in the record that Petitioner was aware of the subject debt was Petitioner’s own submission as evidence – a copy of the HUD Subordinate Note, along with a cover letter dated April 30, 2004 in which it states “Attached please find the documents pertaining to the Subordinate Note and Mortgage [W]hich you are entering into with the Department of Housing and Urban Development in order to assist you in curing your delinquency.” Petitioner subsequently executed this same Note, associated with the subject debt, on June 27, 2004.

The purpose of the Subordinate Note, in its function as a Security Instrument, is to protect HUD from losses which might result when the Borrower defaults under the Note. In this case, such default has occurred and the record lacks evidence that shows either a written release, or consideration exchanged, that would prove Petitioner is no longer obligated to pay the subject debt. The Court therefore finds that Petitioner’s claim that she was not aware of the subject debt lacks merit because the record, and Petitioner’s own evidence, proves that she was aware of the subject debt.

Petitioner finally contends, “We believe the money taken through garnishment should be returned to us; As this debt was paid.” As earlier stated, Petitioner has failed to meet her burden of proof that the debt was paid in full. As a result, there is no basis upon which to authorize refund of the garnishments seized thus far.

As a final point, Rule 26.4(c) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*. (Emphasis added).

Petitioner was issued a *Show Cause Order* on June 6, 2018 in which Petitioner was informed that “the documentary evidence submitted by Petitioner as support for her *Hearing Request* proves only that the primary mortgage was paid in full but fails to substantiate full payment of the subject debt to HUD. Therefore, it is hereby **ORDERED** that, on or before July 6, 2018, PETITIONER SHALL FILE documentary evidence to prove that all or part of the alleged debt in this case is not past due or is unenforceable based on a written release issued from HUD for the subject debt, **or otherwise show cause why this decision should not be rendered in favor of the Secretary.**” (Emphasis in original). Petitioner has since failed to comply.

Accordingly, I find that, pursuant to Rule 26.4(c), Petitioner’s non-compliance with the *Show Cause Order* issued by this Court provides an additional basis for rendering a decision against Petitioner.

ORDER

Based on the foregoing, Petitioner remains contractually obligated to pay the subject debt.

The Order imposing the stay of referral of this matter issued on October 26, 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 of \$57.24 per week, or an amount equal 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 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.