

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

In the Matter of:

Stacey Baileys,

Petitioner.

18-VH-0036-AG-022

721010836

June 13, 2019

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hearing Request*”) filed on November 6, 2017, by Petitioner Stacey Baileys (“Petitioner”) 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”).

JURISDICTION

The administrative judges of this Court have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. This hearing is conducted in accordance with the procedures set forth at 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). Petitioner, thereafter, 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 the 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), this Court stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. *Notice of Docketing, Order, and Stay of Referral*, dated November 6, 2017. On December 7, 2017, the Secretary filed a *Secretary’s Statement* (“*Sec’y Stat.*”) along with documentary evidence in support of his position. To date, Petitioner submitted documentation along with her *Hearing Request*, but has failed to comply with subsequent Orders issued by the Court on February 1, 2018 and March 20, 2018, respectively, for additional documentation that Petitioner has been released by HUD for the subject debt. This case is now ripe for review.

BACKGROUND

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 December 14, 2005, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note"), in the amount of \$7,786.44. *Sec'y Stat.*, ¶ 2; Ex. 2, Note. In exchange, HUD advanced funds to Petitioner's FHA insured mortgage lender to bring the primary home mortgage current on Petitioner's home, thereby avoiding foreclosure. *Sec'y Stat.*, ¶ 3; Note.

The Note described specific events that would cause the debt to become immediately due and payable. One of these events is the payment in full of the primary mortgage. *Sec'y Stat.*, ¶ 4; Note, ¶ (4)(A)(i).

On or about April 1, 2015, the FHA insurance on the primary mortgage was terminated because the lender indicated that the primary note and mortgage had been paid in full. *Sec'y Stat.*, ¶ 5; Ex. 1, Declaration of Brian Dillon, ("*Dillon Decl.*"),¹ dated November 13, 2017, ¶ 4. The Note thus became due and payable on that date. The Secretary alleges that Petitioner failed to make payment at the place and in the amount specified in the Note. The Secretary alleges that Petitioner failed to make payment at the place and in the amount specified in the Note. As a result, the Secretary contends that Petitioner is indebted to HUD in the following amounts:

- (a) \$6,452.70 as the unpaid principal balance as of October 30, 2017;
- (b) \$32.28 as the unpaid interest on the principal balance at 1.0% per annum through October 30, 2017;
- (c) \$423.78 as the unpaid penalties and administrative costs as of October 30, 2017; and
- (d) interest on said principal balance from October 31, 2017 at 1.0% per annum until paid.

Sec'y Stat., ¶¶ 6-7; *Dillon Decl.*, ¶ 5.

A *Notice of Intent to Initiate Administrative Wage Garnishment Proceedings*, dated October 12, 2017, was sent to Petitioner's last known address. *Sec'y Stat.*, ¶ 8; *Dillon Decl.*, ¶ 6. In accordance with 31 C.F.R. 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. *Sec'y Stat.*, ¶ 9; *Dillon Decl.*, ¶ 7. To date, Petitioner has not entered into such an agreement. *Sec'y Stat.*, ¶ 9; *Dillon Decl.*, ¶ 7.

HUD has been unable to obtain Petitioner's current income information. *Sec'y Stat.*, ¶ 11; *Dillon Decl.*, ¶ 8. Although HUD lacks a current pay stub from the Petitioner, the Secretary proposes a repayment schedule of \$200.00 per month or 15% of Petitioner's disposable income. *Sec'y Stat.*, ¶ 11; *Dillon Decl.*, ¶ 8.

DISCUSSION

Petitioner objects to the proposed administrative wage garnishment by disputing the existence and enforceability of the debt claimed by the Secretary. *Hearing Request*. Pursuant to

¹ Brian Dillon is the Director, Asset Recovery Division, HUD Financial Operations Center, The Dillon Declaration (Ex. 1) references November 1, 2017 at ¶ 5(d). This is a scrivener's error.

31 C.F.R. §285.11 (f)(8)(ii), if Petitioner disputes the existence or amount of the debt, the Petitioner “must present, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect.”

Herein, Petitioner claims that “[b]orrowers have not paid the primary loan in full” and that “[t]he home of the loan is still occupied by the borrower.” *Petitioner’s Statement*. Because the primary mortgage has not been paid in full, Petitioner maintains that the subject debt to HUD is not yet due. *Id.* As support, Petitioner offered copies of her Notice of Intent to Collect by Administrative Wage Garnishment; a *Notice of Assignment of a Loan to Rushmore Loan, LLC*; a *Notice of Sale of Ownership of Mortgage Loan*; an *Assignment of Mortgage*; and, a *Monthly Mortgage Statement from Rushmore Loan, LLC*.

For Petitioner to prove that the debt owed to the Secretary was satisfied, she must produce either a written release from HUD, or evidence of valuable consideration accepted by HUD from Petitioner that indicates an intent to release. See Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). In addition, the application of Paragraph 4 of the Note is not only triggered when the primary mortgage is paid in full as so indicated by Petitioner. Paragraph 4(A)(iii) of the Note also provides that when “The Note and related mortgage, deed of trust or similar Security Instrument is *no longer insured by the Secretary*, (Emphasis added), the subject debt immediately becomes due. In this case, the FHA insurance on the primary mortgage was terminated on or about April 1, 2015, and thus became a debt that was *no longer insured by the Secretary*. (Emphasis added); *Sec’y Stat.*, ¶ 5; *Dillon Decl.*, ¶ 4. As a result, the subject debt immediately became due and payable.

Since that date, Petitioner has failed to offer sufficient evidence to prove that the subject debt was paid in full or that Petitioner was released from the subject debt, or even prove that the debt was still insured by HUD. Contrary to what is required by a preponderance of the evidence, Petitioner instead only provided proof that the loan was assigned to Rushmore Loan Services, LLC. In the absence of evidence that otherwise would prove release or satisfaction of debt, the Court must rely on what exists in the record. Therefore, based on the record, the Court finds that Petitioner’s claim fails for lack of proof and further finds that Petitioner remains contractually obligated to pay the subject debt.

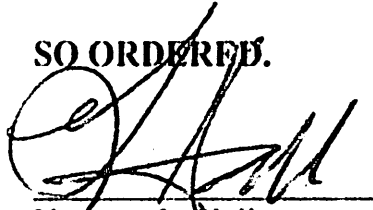
ORDER

Based on the foregoing, the Court finds the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing stay of referral of this matter to the U.S. Department of Treasury for the administrative wage garnishment is VACATED. It is hereby

ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative wage garnishment in the amount of \$200 per month or 15% of Petitioner’s disposable income, whichever amount is less.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'Vanessa L. Hall', written over a horizontal line.

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.