

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

In the Matter of:

**Nicole Ready,**

Petitioner.

18-VH-0041-AG-023

721010514

April 8, 2019

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request*, and certain documentary evidence, filed on November 8, 2017, by Petitioner Nicole Ready (“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”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. 3720A), authorizes federal agencies to use administrative offsets 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 November 9, 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 December 8, 2017, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file the necessary documentary evidence to support her position. This case is now ripe for review.

## **FINDINGS OF FACTS**

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

On or about June 11, 2015, Nicole M. Ready ("Petitioner") executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$31,827.84. *Sec'y. Stat.* ¶ 2, Ex. 2, Note; Ex. 2, *Declaration of Brian Dillon*<sup>1</sup> ("Dillon Decl."), ¶ 4. The Note secured a Subordinate Mortgage (Mortgage) held by the Secretary. *Sec'y. Stat.* ¶ 2, Ex. 2, Note.

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured 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. 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) on June 1, 2045 or, if earlier, when...(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, *Dillon Decl.*, ¶ 4.

On or about December 6, 2016, the FHA mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated the primary note and mortgage was paid in full. *Sec'y. Stat.* ¶ 5, Ex. 1, *Dillon Decl.*, ¶ 4. HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.* ¶ 6, Ex. 2, *Dillon Decl.*, ¶ 5.

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

- a. \$31,827.84 as the total unpaid principal balance as of October 30, 2017;
- b. \$185.57 as the unpaid interest on the principal balance at 1% per annum through October 30, 2017;
- c. \$1,951.36 as the unpaid penalties and administrative costs through October 30, 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.

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<sup>1</sup> Brian Dillon is Director of the Asset Recovery Division of HUD's Financial Operations Center.

## DISCUSSION

Petitioner claims that she does not owe the debt because it was allegedly paid off when her home was sold. Petitioner states that, "This letter is a request to submit a formal request for a hearing regarding Federal Agency Account 4721010514 as I do not feel as [sic] we owe this existence [sic] debt." *Petitioner's Hearing Request*. As support, Petitioner offered as evidence a copy of a Payoff Quote Statement from Chase Mortgage. *Petitioner's Hearing Request*, Attachment.

After reviewing Petitioner's documentary evidence, the Court has determined that Petitioner has failed to meet her burden of proof that the subject debt is non-existent. 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, "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 failed to produce sufficient evidence of a written release directly from HUD that discharges Petitioner for the debt associated with the Subordinate Note or offer proof of any valuable consideration paid to HUD in satisfaction of the subject debt to render the subject debt unenforceable.

The Payoff Quote Statement from Chase Mortgage provided by Petitioner did not include the subject debt owed to HUD, as so admitted by Petitioner. Petitioner more specifically stated:

Attorney Joseph L. Grimaldi requested pay off amounts on the referenced property of 93 Harvard St, Bridgewater, MA 02324. At this time, we were informed the total pay off was 256,647.01 for account 1465180837. This amount paid in full to Chase Mortgage upon sale of this property on 12/2/17. Please see the attached referenced pay off quote provided by Chase that *did not* reference any additional HUD loan/subsidy."

*Petitioner's Hearing Request*, Attachment.

The Court agrees with Petitioner that the Payoff Quote Statement does not reflect the subject debt as a debt to be included in the payoff amount.

It is well established 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). Petitioner herein has failed to produce either evidence of a written release from her obligation to pay the subject debt, or evidence of valuable consideration paid to HUD in satisfaction of the debt. As a result, the Court finds that Petitioner's claim fails for lack of proof and also finds, consistent with case law precedent, that Petitioner remains contractually obligated to pay the debt so claimed by the Secretary.


**ORDER**

Based on the foregoing, Petitioner remains legally obligated to pay the alleged debt in the amount so claimed by the Secretary.

The *Order* imposing the stay of referral of this matter to the U.S. Department of 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 in the amount of \$406.24 biweekly, or an amount equal to 15% of Petitioner's disposable income.

**SO ORDERED.**

  
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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 the written decision, and shall be granted only upon a showing of good cause.