

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

In the Matter of:

Mark Myers,

Petitioner.

18-VH-0052-AG-031

721010975

March 6, 2019

DECISION AND ORDER

On November 15, 2017, Mark Myers (“Petitioner”) filed a *Request for Hearing Request (Hearing Request)* 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. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts 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. 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). 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 15, 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 1, 2017, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file sufficient documentary evidence in support of his claim, or in response to the orders issued by this Court. 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 3720D, because of a defaulted loan that was insured against non-payment by the Secretary.

In or about September 2016, the HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Secretary's Statement (Sec'y. Stat., Ex. A, Declaration of Brian Dillon* ¹ ("*Dillon Declaration*") at ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Id.* In exchange for foreclosure relief, on September 19, 2016, Petitioner executed a Partial Claims Promissory Note ("Note") in the amount of \$5,658.82 in favor of the Secretary. *Sec'y. Stat., Ex. B, Note.* Paragraph 3(A) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. *Sec'y. Stat., Ex. B, Note* at ¶ 3(A)(i).

On or about February 6, 2017, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec'y. Stat., Ex. A, Dillon Declaration* at ¶ 4; *Ex. B, Note* at ¶¶ 3(A)(i) & (iii). Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "U.S. Department of HUD c/o Novad Management Consulting, Shepherd's Mall, 2401 NW 23rd Street, Suite 1A1, Oklahoma City, OK 73107... or any such other place as [HUD] may designate in writing by notice to Borrower." *Sec'y. Stat., Ex. B, Note* at ¶ 3(B).

Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent. *Sec'y. Stat., Ex. A, Dillon Declaration* at ¶ 5. The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$5,658.82 as the unpaid principal balance as of November 30, 2017;
- (b) \$28.26 as the unpaid interest on the principal balance at 1% per annum through November 30, 2017;
- (c) \$375.99 as the unpaid penalties and administrative costs as of November 30, 2017; and
- (d) Interest on said principal balance from December 1, 2017 at 1% per annum until paid.

Sec'y. Stat., Ex. A, Dillon Declaration at ¶ 5.

¹ Brian Dillon is Director of Asset Recovery Division for the U.S. Housing and Urban Development.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated October 19, 2017 ("Notice") was sent to Petitioner. *Sec'y. Stat.*, ¶ 10; Ex. A, *Dillon Declaration* at ¶ 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 with HUD under mutually agreeable terms. Petitioner has not entered into a written repayment agreement in response to the Notice. *Sec'y. Stat.*, ¶ 11; Ex. A, *Dillon Declaration* at ¶ 7.

HUD's proposed repayment schedule is \$168.29 per month, which will liquidate the debt in three years as recommended by the Federal Claims collection, or 15% of Petitioner's disposable pay. *Id.* at ¶8.

DISCUSSION

Petitioner claims that he does not owe the subject debt because it was paid in full at settlement. More specifically, Petitioner states, "This [the debt] was said to be satisfied at settlement as not owed. I specifically asked about this before going to settlement on January 30, 2017." *Petitioner's Hearing Request*. As support, Petitioner offered into evidence a copy of a Credit Karma Report in which the status of the subject debt was identified as "closed-derogatory" and the payment status of the same was categorized as "Collection/Charge-off."

For Petitioner not to be held liable for the full amount of the subject debt, there must either be 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). In addition, this Court has maintained that "[i]f satisfaction of a senior deed of trust prevents a junior trust holder from enforcing a junior trust deed on the same real property, the junior trust holder may collect the debt, now unsecured, by initiating collection efforts based on the obligations in the loan note." *Mitchell and Rosalva Fraijo*, HUDBCA No. 99-C-CH-Y200 at 3 (March 20, 2000); *John Bilotta*, HUDBCA No. 99-A-CH-Y258 (December 29, 1999) (citing *Kimberly S. (King) Thede*, HUDBCA No. 89-4587-L74 (April 23, 1990)).

In this case, the Credit Karma Report presented as evidence by Petitioner is insufficient as it does not prove that HUD issued a written release that discharged Petitioner for the debt associated with the Note. Petitioner has also failed to produce sufficient evidence of valuable consideration paid to HUD in satisfaction of the subject debt that would otherwise render the subject debt unenforceable. The Subordinate Note herein is a separate and distinct debt from the primary mortgage. *See Catherine Coley*, HUDOA No. 16-VH-0147-AG-039 at 3 (July 24, 2017). Without evidence from Petitioner to prove that the subject debt associated with that Note is already paid, Petitioner's contractual obligation to pay the Note remains intact.

The Secretary has successfully argued that, "The Credit Karma report provided by Petitioner shows that HUD reported his indebtedness to the credit reporting agencies, but when Petitioner failed to pay, HUD referred his account to the U.S. Department of the Treasury, and reported his account to the credit reporting agencies as "Collection/Charge-Off", meaning the debt was **not paid**. *Sec'y. Stat.*, ¶ 9. The Secretary has met his burden of proof that the subject debt is

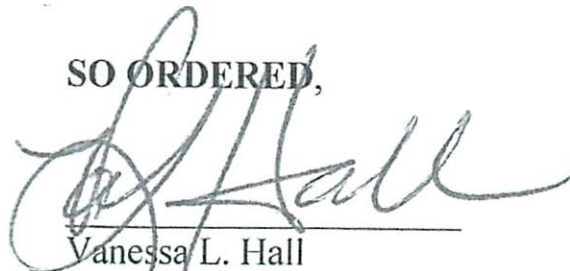
still owed by Petitioner. In the absence of evidence from the Petitioner that either refutes or rebuts what the Secretary has offered, the Court must find that Petitioner's claim fails for lack of proof.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount of \$ \$168.29 per month, which will liquidate the debt in three years as recommended by the Federal Claims collection, or 15% of Petitioner's disposable pay.

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