

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

In the Matter of:

Wendy Letis,

Petitioner.

18-VH-0057-AG-035

721010953

May 3, 2019

**DECISION AND ORDER**

On November 17, 2017, Wendy Letis (“Petitioner”) filed a 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. § 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 November 22, 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 November 29, 2017, the Secretary filed his *Statement* along with documentation in support of his position. The Court granted twice Petitioner’s requests for extension on February 22, 2018 and May 22, 2018 respectively. On June 21, 2018, Petitioner filed her *Affidavits of Wendy Letis and Timothy Schofield*, and *Statement on Behalf of Petitioner Regarding Alleged Past Due Debt and Legal Enforceability Thereof (Petitioner’s Statement)*, along with documentary evidence in support of her position. 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.

In or about June 2014, the HUD-insured loan on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Sec'y. Stat.*, ¶ 2; Ex. A, *Declaration of Gary Sautter*<sup>1</sup> ("*Sautter Decl.*"), ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Sec'y. Stat.*, ¶ 3; Ex. A, *Sautter Decl.*, ¶ 4.

In exchange for foreclosure relief, on January 27, 2015, Petitioner executed a *Subordinate Note* ("*Note*" or "*Subordinate Note*") in the amount of \$77,303.96, in exchange for HUD advancing funds to Petitioners' FHA insured mortgage lender. *Sec'y. Stat.*, ¶ 4; Ex. B ("*Note*"), at 1, ¶ 2. Paragraph 4(A) of the Note described four events that would make the debt immediately due and payable. *Sec'y. Stat.*, ¶ 5; Note, at 1, ¶ 4. One of these events was the payment in full of the primary note and related mortgage. *Id.* On or about February 14, 2017, the insurance on the first mortgage was terminated, as the mortgage was paid in full. *Sec'y. Stat.*, ¶ 6; Ex. A, *Sautter Decl.*, ¶ 4.

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 2488 E 81st St., Suite 700, Tulsa, OK 74137 or any such other place as [HUD] may designate in writing by notice to Borrower." *Sec'y. Stat.*, ¶ 5; Note, at 1, ¶ 4(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.*, ¶ 7; Ex. A, *Sautter Decl.*, ¶ 5.

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. *Sec'y. Stat.*, ¶ 9; Ex. A, *Sautter Decl.*, ¶ 5. Therefore, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$77,303.96 as the unpaid principal balance as of October 31, 2017;
- (b) \$321.95 as the unpaid interest on the principal balance at 1% per annum through October 31, 2017;
- (c) \$4,689.02 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.*, ¶ 9; Ex. A, *Sautter Decl.*, ¶ 5.

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

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<sup>1</sup> Mr. Sautter is the Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

Therefore, HUD's proposed repayment schedule is \$2,286.53 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay. *Sec'y. Stat.*, Ex. A, *Sautter Decl.*, ¶ 7.

## DISCUSSION

In this case, Petitioner challenges the legal enforceability of the subject debt and claims that collection of the said debt may not be pursued against her due to operation of law.

As support, Petitioner offered into evidence copies of email communications between her and her attorney, Timothy Schofield; the HUD Notice for Servicing Lenders on the Transfer of Services in which Devall, LLC was identified as the National Loan Servicing Support for HUD; the Loan Modification Agreement; the Subordinate Note; the Payoff Statement from M&T Bank; a payoff letter from Adirondack Bank to M&T Bank dated February 10, 2017, along with a copy of the payoff check payment to M&T Bank for the primary mortgage in this case; and a UPS Proof of Delivery of the final payment to J. Gormen in Buffalo, N.Y.

### I. The Loan Modification Agreement Did Not Pay in Full the Subject Debt

Petitioner first contends that the subject debt was paid in full because her Loan Modification Agreement with M&T Bank covered the debt owed to HUD. Petitioner is convinced that the payoff of the subject debt occurred because the *Subordinate Note* and Loan Modification bore the same FHA case number. Petitioner states more specifically:

In 2014, after working with M&T Bank and Ann Marie Stohl, I eventually obtained a modification of the existing mortgage that reduced my monthly payment and, I was told, forgave some of the arrears, so that I could resume making mortgage payments I could afford to keep my home.

At no point in time was I ever advised by M&T Bank or any of its representatives that the refi[n]ance/modification I entered into in 2014 would require me to pay back any portion of the original mortgage to HUD.

*Petitioner's Statement*, ¶¶ 4,7

After reviewing the evidence offered by Petitioner, the Court finds that Petitioner's reliance on the M&T loan modification as proof of full payment of the subject debt is misplaced. While the *Loan Modification Agreement* and *Subordinate Note* may reflect the same FHA case numbers, the content of the *Loan Modification Agreement* does not state specifically that the subject debt associated with the *Subordinate Note* was satisfied. M&T is the party to the contract for the primary mortgage and the *Loan Modification Agreement* to which Petitioner refers; but, the parties to the *Subordinate Note* are Petitioner and HUD. See *Petitioner's Statement*, Attachment Agreement and Note. The terms of the *Loan Modification Agreement* cannot now dictate the obligations of the parties to the *Subordinate Note* herein because HUD is not a party to the *Loan Modification Agreement*.

The Secretary's right to collect the subject debt in this case emanates from the terms of the Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the subject debt, she must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518-H51 (January 27, 1988); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986).

When Petitioner paid in full the primary mortgage, the amount of the subject debt immediately became due based on the agreement between Petitioner and HUD in the *Subordinate Note*. It is important to understand that the loan modification adjusted the terms of the primary mortgage agreement, not the terms of the *Subordinate Note*. The *Subordinate Note* functions as a Security Instrument to protect HUD from losses which might result if the Borrower (herein Petitioner) defaults. In this case, such default has occurred but the record lacks evidence that the default has been cured. The payoff letters and check payments offered by Petitioner only reflect full payment of the primary mortgage. *Petitioner's Statement*, Attached Payoff Statements and Email Communications. Petitioner has not otherwise produced sufficient evidence of either a written release, or of consideration exchanged, that would then prove Petitioner is no longer obligated to pay the subject debt. The Court therefore finds that Petitioner has failed to meet her burden of proof, and further finds that Petitioner's claim fails for lack of proof.

## II. The Subject Debt Was Not Paid in Full at Closing

Petitioner next contends that, "In January 2017, Attorney Schofield received a payoff letter for the M&T Bank mortgage that reflected the same Loan number (5255737) and FHA Case No. (371-4075670) as was on the M&T Mortgage and the Subordinate Mortgage." *Petitioner's Statement*, ¶ 10. She claims that, "Based on the forgoing, I reasonably relied on the advisement of Attorney Schofield, HUD, Deval, and M&T Bank, that the payoff total made at closing ultimately paid off any monies I owed for this property." *Petitioner's Statement*, ¶ 15. Petitioner concluded that she "would have never agreed to sell my house in 2016, nor would I have moved forward with the closing in February 2017 if not for the representations that the payoff of the mortgage included both the M&T payoff and any monies allegedly due under the Subordinate Note and Mortgage." *Petitioner's Statement*, ¶ 17.

The record does not indicate that the *Subordinate Note* was satisfied based on proof of payment, or proof that, upon default on the Note, M&T Bank had assumed responsibility to pay off the subject debt or was otherwise negligent in not doing so. But, even if M&T had assumed this responsibility, a third party's negligence does not normally relieve Petitioner of liability for the debt. See Bryan McClees, HUDOA No. 17-AM-0037-AO-010 (February 14, 2018). The terms of the Note executed on June 27, 2014 are binding on Petitioner and HUD alone, not on Petitioner, HUD, and M&T Bank. This means that the onus falls on Petitioner, not on the mortgage company, to ensure that the subject debt associated with the Subordinate Note is fully satisfied. In this case, a default occurred. Petitioner has failed to meet her burden of proof that

she has paid in full the subject debt. The Court therefore finds that Petitioner's claim again fails for lack of sufficient proof.

III. Servicer Deval LLC was not Authorized to Release Petitioner from Her Obligation to Pay the Subject Debt

Petitioner finally contends that she was misled by HUD's agent, servicer Deval LLC that the payoff of the primary mortgage would discharge all debts due. *Petitioner's Letter* dated June 21, 2018, p. 2. More specifically, Petitioner claims:

HUD cannot be said to be an innocent party to this transaction. In cases such as this, principles of estoppel should prevent HUD from enforcing its right to repayment of the disputed debt, as enforcement would result in an injustice upon Petitioner, who, in justifiable reliance of the representations of HUD and its agent, servicer Deval, was misled into acting upon the belief that the payoff would discharge all debts due, including that which was allegedly owed pursuant to the Subordinate Note & Mortgage.

The Court reviewed the *Notice for Servicing Lenders* (Notice) Petitioner provided as proof that Deval LLC was allegedly HUD's agent. The Notice provides "DEVAL LLC shall perform loan services to include performing a wide range of FHA Insured and Secretary-held first, second, and subordinate note and mortgage loan servicing functions," followed by administrative details that instruct Deval LLC how to carry out that function. Nowhere in the Notice, regulations, or guidance does it permit service providers like M&T Bank or Deval LLC to provide payoff figures on behalf of HUD and/or issue a mortgage satisfaction that extinguishes HUD's indebtedness without HUD's express consent.

Governing regulations identify HUD as a regulatory body that oversees FHA-insured lenders and acts in accordance with statutory requirements. See 24 C.F.R. § 203, et seq. In this case, Petitioner was threatened with foreclosure in or about June 2014 and HUD advanced funds to Petitioner's lender to prevent foreclosure in accordance with 24 C.F.R. § 203.371(b). One of the conditions for this payment or advancement of funds is the execution of a Subordinate Mortgage which the lender, by regulation, must facilitate. See 24 C.F.R. § 203.371(c).<sup>2</sup>

Based on the evidence presented by Petitioner, the Court has determined that HUD's actions do not reflect with certainty that HUD's intent was to appoint Deval LLC as its agent. Further, the language of the Notice itself does not provide a reasonable basis for the Court to conclude that Petitioner possessed a good faith belief that Deval LLC operated as HUD's agent. Consequently, the Court has determined that this claim lacks merit.

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<sup>2</sup> 24 C.F.R. § 203.371 (c) -- Partial claim. (c) Repayment of the subordinate lien. The mortgagor must execute a mortgage in favor of HUD with terms and conditions acceptable to HUD for the amount of the partial claim under §203.414(a). HUD may require the mortgagee to be responsible for servicing the subordinate mortgage on behalf of HUD.

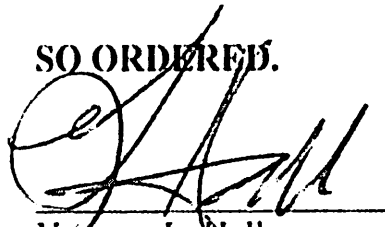
As a final point, Petitioner claims, "Importantly, I didn't even receive enough monies in proceeds from that sale to pay off the HUD mortgage, which goes to show that I would have never agreed to sell the property if it were made clear to me by HUD/Duvall that additional monies were due under the Subordinate Note and Mortgage." It is not entirely clear whether Petitioner is raising an issue regarding a lack of sufficient funds or enough monies to pay the subject debt. The Court is merely acknowledging that this argument was raised by Petitioner, but it is also being acknowledged that it such issue was raised without submitting sufficient evidence to substantiate the same. Should this matter currently be a concern for Petitioner, it is not one that the Court is authorized to resolve without evidence. Petitioner may wish to discuss this matter with Counsel for the Secretary or Michael DeMarco, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner may also request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

### **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 on November 22, 2017 is **VACATED.**

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15% of Petitioner's disposable pay.

**SO ORDERED.**

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

Vanessa L. Hall

Administrative Judge

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**Review of determination by hearing officers.** A motion for reconsideration of the 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.