

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

In the Matter of:

Ralph and Pricella Leavers,

Petitioners.

18-VH-0103-AG-050

543908535

September 10, 2019

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* ("Hearing Request") filed by Ralph and Pricella Leavers ("Petitioners") on January 29, 2018 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 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, Petitioners 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, Petitioners may present evidence that the terms of any proposed repayment schedule are unlawful, would cause an undue financial hardship to Petitioners, 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 January 29, 2018, 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 April 16, 2018, the Secretary filed his *Statement* along with documentation in support of his position. On September 7, 2018, Petitioners

filed a *Statement* and documentary evidence in support of their position that the debt does not exist. 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 November 19, 2013, Ralph and Pricella Leavers ("Petitioners") executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$10,122.94. *Secretary's Statement*, Ex. 1, Note.

As a means of providing foreclosure relief to Petitioners, HUD advanced funds to Petitioners' FHA insured mortgage lender; and in exchange for such funds, Petitioners executed the Note in favor of the Secretary. *Secretary's Statement*, Ex. 2, *Declaration of Brian Dillon*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 November 1, 2043 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." *Secretary's Statement*, Ex. 1, ¶ 3.

On or about December 27, 2016, the FHA mortgage insurance on Petitioners' primary mortgage was terminated as the lender indicated that the primary mortgage was paid in full. *Secretary's Statement*, Ex. 2, *Dillon Decl.*, ¶ 4. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioners remain indebted to HUD. *Secretary's Statement*, Ex. 2, *Dillon Decl.*, ¶ 4-5.

In accordance with 31 C.F.R. 285.11(e) (2) (ii), Petitioners was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. Notices of Intent to Initiate Administrative Wage Garnishment were mailed to Ralph Leavers and Pricella Leavers on January 3, 2018 and August 25, 2018, respectively. *Secretary's Statement*, Ex. 2, *Dillon Decl.*, ¶ 4-5.

Petitioners are justly indebted to the Secretary in the following amounts:

- a. \$7,464.10 as the total unpaid principal balance as of March 30, 2018;
- b. \$6.22 as the unpaid interest on the principal balance at 1% per annum through March 30, 2018;

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

- c. \$0.00 as the unpaid penalties and administrative costs through March 30, 2018; and
- d. interest on said principal balance from March 31, 2018 at 1% per annum until paid.

Secretary's Statement, Ex. 2, Dillon Decl., ¶ 4-5.

HUD proposes a debt repayment schedule of \$190.58 bi-weekly, or an amount equal to 15% of Petitioners' disposable income. *Sec'y. Stat., ¶ 10, Ex. 2, ¶ 11.*

DISCUSSION

Petitioners do not dispute the amount of the debt. Instead, Petitioners challenge the existence of the debt because he alleges that the subject debt has already been paid off by the First American Title Company on Petitioners' behalf. Along with their *Hearing Request*, Petitioners offered into evidence copies of an *Amended Complaint for Damages* against First American Title Company filed with the Superior Court of the State of California in the County of Butte on August 31, 2018 for the debt owed to HUD; a *Payoff Letter* from First American Title dated December 7, 2016; and email communications from the underwriting staff of First American Title. *Hearing Request, Attachments.*

After reviewing Petitioners' documentary evidence, the Court has determined that the evidence is insufficient as proof that the subject debt does not exist or is unenforceable. For Petitioners 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 Petitioners' 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 Petitioners fail to support their contention that the subject debt does not exist because none of the documentation submitted shows that Petitioners were released from their contractual obligation to pay this debt. First, the *Amended Complaint for Damages* merely supports that Petitioners' intent to pursue recovery from First American Title based on the allegations they have claimed. HUD is not identified as a party to that action, so the outcome of that action is not relevant to this proceeding. Next, the *Payoff Letter* does not state that Petitioners were released from the subject debt. While certain language is noted in the letter that the primary and subordinate note should have been paid off, there is no indication that the subject debt was in fact satisfied. In a case like this one, the onus falls on Petitioners to produce evidence of a written release directly from HUD that specifically states that Petitioners has been discharged from the subject debt, or otherwise provide evidence that proves 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 payoff letter to the primary lender or a file ledger. See Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). The title company's *Payoff Letter* does not provide sufficient evidence that Petitioners has been released from the subject debt. Because Petitioners have failed to produce evidence of a written release from HUD for their obligation to pay the subject debt, or evidence of valuable consideration paid by Petitioners to HUD in

satisfaction of the subject debt, the Court finds that Petitioners have failed to meet his burden of proof to successfully refute or rebut the evidence presented by the Secretary. Thus, the Court finds that Petitioners' claim fails for lack of proof and Petitioners' obligation to pay the debt remains intact.

ORDER

Based on the foregoing, the Court finds that the debt that is the subject of this proceeding exists and is enforceable in the amount alleged by the Secretary.

The Order imposing the stay of referral of this matter 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 at 15% of Petitioners' disposable income.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

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