

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

In the Matter of:

Brady Urbanek and Samantha Urbanek,

Petitioners.

18-VH-0117-AG-061

721010363

March 7, 2019

DECISION AND ORDER

On February 21, 2018, Brady and Samantha Urbanek (“Petitioners”) filed a hearing request along with limited documentary evidence 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, 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 February 21, 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 March 21, 2018, the Secretary filed his *Statement* along with documentation in support of his position. To date,

Petitioners have failed to submit the necessary additional documentary evidence that sufficiently supports their position that the subject debt was paid in full. 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.

On or about February 18, 2010, Brady C. Urbanek and Samantha Marie Urbanek ("Petitioners"), executed and delivered to the Secretary a Subordinate Note ("Note"), in the amount of \$7,841.30. *Secretary's Statement* ("Sec'y. Stat.") ¶ 2, filed August 31, 2017; Ex. 1, *Declaration of Brian Dillon (Dillon Decl.)* ¶ 4. By terms of the Note, the amount to be repaid thereunder becomes due and payable "(4)(A) [o]n December 1, 2037 or, if earlier, when the first of the following events occurs: (i) borrower has paid in full all amounts due under the primary note and related mortgage; 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.* ¶ 5, Ex. 2, ¶ 4.

On or about October 7, 2016, the FHA mortgage insurance on Petitioners' primary mortgage was terminated, as the lender indicated the primary mortgage was paid in full. *Sec'y. Stat.* ¶ 5. Upon payment in full of the primary note, the Note became due and payable. To date, Petitioners have not made any payments on this Note. *Sec'y. Stat.* ¶ 7.

The Secretary has made efforts to collect this debt from Petitioners but has been unsuccessful. *Sec'y. Stat.* ¶ 6, Ex. 1, *Dillon Declaration*, ¶ 5. As a result, Petitioners remain in default on the Note and are indebted to the Secretary in the following amounts:

- a. \$7,841.30 as the total unpaid principal balance as of February 28, 2018;
- b. \$78.36 as the unpaid interest on the principal balance at 1% per annum through February 28, 2018;
- c. \$507.38 as the unpaid penalties and administrative costs through February 28, 2018; and interest on said principal balance from March 1, 2018 at 1% per annum until paid.

Sec'y. Stat. ¶ 7, Ex. 1, ¶ 5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated July 27, 2017, was mailed to Petitioners at their last known address. *Sec'y. Stat.* ¶ 8, Ex. 1, ¶ 6.

HUD's proposed repayment schedule is \$235.00 per month, which will liquidate the debt in three years as recommended by the Federal Claims collection, or 15% of Petitioners' disposable pay. *Sec'y. Stat.* ¶ 10.

DISCUSSION

Petitioners contend that the subject debt was paid in full by Providence Title Company on their behalf, so they no longer owe this debt. Petitioners state:

I am writing to contest that I do not owe this debt. In the attached email, Providence Title clearly state in writing that the debt was already collected. I have attempted to contact Providence Title on several occasions to resolve this issue. During each conversation, I was assured the issue was being addressed and would be resolved at no cost to me. I thought everything was paid and I had a new loan payment. *Petitioners' Hearing Request.*

As support, Petitioners submitted copies of email communications with the Providence Title Company (Providence) and a letter from Providence dated September 15, 2016 that Petitioners claim showed that the payoff amount includes full payment of the subject debt. *Hearing Request, Attachments.*

For Petitioners 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 Petitioners' 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). The Court is not convinced that Petitioners have met their burden of proof. The Secretary's right to collect the alleged debt in this case emanates from the terms of the Note, not from the terms of payoff statements from the primary lender or letters of satisfaction from title companies. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007).

After a careful examination of the record, the Court has determined that the evidence presented by Petitioners is insufficient and fails to support their position that the subject debt was fully satisfied upon payment of \$136,304.31 due to the primary lender. For Petitioners not to be held liable for the full amount of the subject debt, there must be either a release in writing from the former lender [herein HUD] explicitly relieving Petitioners' 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).

The Court acknowledges and agrees with the Secretary's assessment that, "Petitioners have not demonstrated that they received a release from HUD of their obligation to repay the Note." The September 15, 2016 letter Petitioners offered as proof of payment for the subject debt was insufficient because it did not reflect, specifically, that HUD had released Petitioners from their contractual obligation. The onus falls on Petitioners to produce the necessary evidence to meet their burden of proof of payment, not on Providence Title Company or Midland Mortgage.

In this case, Petitioners have failed to produce sufficient evidence of a written release *directly from HUD* that discharged Petitioners from the subject debt, or of valuable consideration

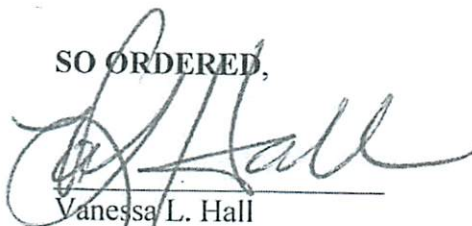
paid to HUD in satisfaction of the subject debt. (Emphasis added.) "Assertions without evidence are not sufficient to show that a debt claimed by the Secretary is not past due or unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009); Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996); 31 C.F.R. 285.11(f)(8)(ii). Thus, the Court must find that, without evidence from Petitioners to sufficiently prove the subject debt was paid in full, Petitioners' contractual obligation to pay the Note remains intact and that Petitioners' 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 \$235.00 per month, which will liquidate the debt in three years as recommended by the Federal Claims collection, or 15% of Petitioners' disposable pay.

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