

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

In the Matter of:

**Bernadine McCrow ,**

Petitioner.

18-VH-0120-AG-063

721009750

March 13, 2019

**DECISION AND ORDER**

On February 22, 2018, Bernadine McCrow (“Petitioner”) filed a *Request for Hearing (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 February 22, 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 14, 2018, 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 her claim, and also has failed to respond 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.

On or about March 14, 2008, Bernadine McCrow ("Petitioner") executed and delivered to the Secretary a Partial Claim Promissory Note ("Note") in the amount of \$ 4462.36. The Note secured a Subordinate Mortgage held by the Secretary. *Secretary's Statement (Sec'y. Stat.)*, ¶ 1, Ex. 1, *Note*.

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured first mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat.*, ¶ 2, Ex. 2, *Declaration of Brian Dillon (Dillon Decl.)*,<sup>1</sup> ¶ 4. By terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs (3)(A)[o]n May 1, 2019 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, 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.*, ¶ 3, Ex. 1, *Note*, ¶ 3.

On or about December 1, 2015, the Petitioner's first mortgage was paid in full and the FHA mortgage insurance was terminated. *Sec'y. Stat.*, ¶ 4, Ex. 2, *Dillon Decl.*, ¶ 4. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.*, ¶ 4, Ex. 2, *Dillon Decl.*, ¶¶ 4-5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated July 27, 2017, was mailed to Petitioner at his last-known address. *Sec'y. Stat.*, ¶ 6, Ex. 2, *Dillon Decl.*, ¶ 6.

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

- a. \$4,462.36 as the unpaid principal balance as of February 28, 2018;
- b. \$48.36 as the unpaid interest on the principal balance at 1.0% per annum through February 28, 2018;
- c. \$303.96 as the unpaid penalties and administrative costs through February 28, 2018; and
- d. interest on said principal balance from March 1, 2018, at 1.0% per annum until paid.

*Sec'y. Stat.*, ¶ 7, Ex. 2, *Dillon Decl.*, ¶ 7.

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

HUD was unable to obtain Petitioner's current income information. *Sec'y. Stat.*, ¶ 9, Ex. 2, *Dillon Decl.*, ¶ 8. Therefore, the Secretary proposes a repayment schedule of \$134.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collections Standards. In the alternative, should Petitioner's pay information be determined, HUD requests a repayment schedule in an amount equal to 15% of Petitioner's disposable income. *Id.*

### **DISCUSSION**

Petitioner claims that she does not owe the debt so claimed by the Secretary. More specifically, Petitioner states:

I am disputing the \$6,119.94. The reason being is the loan modification did not get approved.... I was to close in it being paid off so that I would not lose it. I borrowed the money to get it caught up and it was very difficult. I called Wells Fargo and there is a Loan Officer looking into this Loan Modification that I never received. I am waiting to hear from them again as they are researching the situation out. I do not believe I owe this money as I would never take from the Government.

Beyond Petitioner's mere allegation that the lack of approval for her loan modification led to the default of the subject loan, Petitioner has failed to provide any evidence that she was released from the debt that is the subject of this proceeding. There is no evidence in the record that Petitioner either received and introduced into evidence copies of such documents of release or satisfaction of said debt, or demonstrated that HUD's Note was otherwise paid in full.

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)).

Petitioner's allegation that the lack of approval for a loan modification should render the subject debt unenforceable is unsupported by the record. The 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). The Note clearly indicates that on or about December 1, 2015, Petitioner's primary mortgage was paid in full which, in turn, triggered the timeline for the Note to become due. *Sec'y. Stat.*, Ex. 1 ¶ 3(A)(i). In this case, Petitioner has failed to produce sufficient evidence of a written release from HUD that discharges Petitioner for the debt associated with the Note. She 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.

This Court has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Without proof that Petitioner was released by HUD from her contractual obligation to pay this debt, the Court is unable to determine the credibility of Petitioner’s claim. Therefore, the Court finds that Petitioner remains obligated to pay the subject debt.

As a final point, Rule 26.4(c) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*.

(Emphasis added).

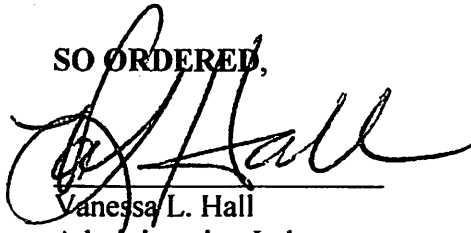
Accordingly, the Court finds that, pursuant to Rule 26.4(c), Petitioner’s non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

### **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 \$ \$134.00 per month, which will liquidate the debt in three years as recommended by the Federal Claims collection, or 15% of Petitioner’s disposable pay. In the alternative, should Petitioner’s pay information be determined, HUD requests a repayment schedule in an amount equal to 15% of Petitioner’s disposable income.

**SO ORDERED,**

  
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 this *Decision and Order*, and shall be granted only upon a showing of good cause.