

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

In the Matter of:

Mayra Aguirre,

Petitioner.

18-VH-0177-AG-089

721009268

March 20, 2019

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* ("Hearing Request"), and documentary evidence, filed by Mayra Aguirre ("Petitioner,") on May 9, 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, 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 May 9, 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 June 7, 2018, the Secretary filed his *Statement* along with documentation in support of his position. Petitioner submitted documentation in support of her position with her Hearing Request but, thereafter, did not submit additional necessary documentation in compliance with the Court's Orders. 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.

On or about June 19, 2013, Mayra Aguirre ("Petitioner") executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$ 7,637.70. *Secretary's Statement (Sec'y. Stat.)*, ¶ 2, Ex. 2. HUD holds a valid claim against the Petitioner. *Sec'y. Stat.*, Ex. 1, *Declaration of Brian Dillon (Dillon Decl.)*,¹ ¶ 3.

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.*, ¶ 3; Ex. 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)[o]n July 1, 2043 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.*, ¶ 4, Ex. 2.

On or about November 30, 2015, the FHA mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated the primary note and mortgage was paid in full. *Sec'y. Stat.*, ¶ 5; Ex. 1, *Dillon Decl.*, ¶ 4. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.*, ¶ 6; Ex. 1, *Dillon Decl.* ¶ 6.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated May 10, 2017, was mailed to Petitioner at his last-known address. *Sec'y. Stat.*, ¶ 8, Ex.1, *Dillon Decl.*, ¶ 6.

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

- a. \$7,637.70 as the total unpaid principal balance as of April 30, 2018;
- b. \$108.12 as the unpaid interest on the principal balance at 1% per annum through April 30, 2018;
- c. \$1,102.94 as the unpaid penalties and administrative costs through April 30, 2018; and
- d. interest on said principal balance from May 1, 2018 at 1% per annum until paid:

Sec'y. Stat., ¶ 7; Ex. 1, *Dillon Decl.*, ¶ 5.

HUD proposes a garnishment repayment schedule of \$278.71 biweekly, or an amount equal to 15% of Petitioner's disposable income. *Sec'y. Stat.*, ¶ 10; Ex. 1, *Dillon Decl.*, ¶ 9.

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

DISCUSSION

Petitioner does not dispute the amount of the debt. Instead, Petitioner challenges the existence of the debt based on the premise that the subject debt was forgiven. *Hearing Request* at 1. More specifically, Petitioner states:

I will be attaching these documents along with the letter I received from BOA stating our full principal for first lien mortgage and subordinate note has been approved with the total of \$194,053.74 total with both balances included. We are offering to forgive the total unpaid balance of \$194,053.74 that we owe on the modified first lien mortgage and subordinate note and subordinate mortgage/deed of trust, and therefore, we will no longer be responsible for paying this amount. We will also forgive any outstanding fees and accrued Interest on both loans.

Full principal \$142,985.89
Subordinate note \$51,067.85

Totaling: \$194,053.74 which is the amount stating on the letter received from BOA forgiving both balances.

Along with her *Hearing Request*, Petitioner offered into evidence copies of a *Forgiveness Approval Letter (Approval Letter)* from Bank of America, dated August 14, 2015; a *Lien Release Letter* dated January 20, 2016 from Bank of America; and Petitioner's Loan History Statement from Bank of America. *Hearing Request*, Attachments.

In response, the Secretary argues:

To the contrary of what Petitioners [sic] assert, the loan forgiveness offered by Bank of America pertained only to the unpaid principal balance of Petitioner's Bank of America mortgage and a subordinate partial claim that had been assigned to Bank of America Corp (BAC). Specifically, Bank of America Senior Vice President, Carlo Porcelli, sent an email to HUD, dated May 14, 2018, specifically stating, "...The \$194,053.74 total is comprised of \$142,985.89 principle balance and \$51,068.85 partial claim (which was assigned back to the Bank by HUD). The partial claim of \$7,637.70 (held by HUD) is not part of the forgiven \$194,053.74 amount."... Accordingly, the documentation submitted by Petitioner does not pertain to HUD's Note and the unpaid debt owed to HUD.

As support, the Secretary produced copies of an *Affidavit* from the Director of HUD's Financial Operations Center; an email from the Bank of America Senior Vice President to HUD dated May 14, 2018; and the Subordinate Note signed by Petitioner.

After reviewing the record of evidence, the Court has determined that Petitioner has failed to meet her burden of proof that the subject debt does not exist or is not enforceable. For Petitioner 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 Petitioner's 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 Petitioner does not prove that Petitioner was released from her contractual obligation to pay the subject debt. First, the language in the

Approval Letter does not show any indication that HUD directly forgave Petitioner of the subject debt. While the language in the letter offered by Petitioner shows that she was approved for a certain full principal forgiveness amount of her first lien mortgage and Subordinate Note with Bank of America, the record does not reflect that HUD directly forgave the subject debt or that the Bank of America had the authority to act on behalf of HUD to forgive the subject debt owed to HUD. *Hearing Request, Attach Approval Letter.* Second, upon reviewing the email from the Senior Vice President of Bank of America to HUD, submitted by the Secretary, it is clear that the intent was for the subject debt *not* to be included as part of the forgiven debt amount of \$194,053.74. (Emphasis added). The email specifically states, "Please see the attached DOJ extinguishment notice: the \$194,053.74 total is comprised of \$142,985.89 principle balance and \$51,068.85 partial claim (which was assigned back to the Bank by HUD). *The partial claim of \$7,637.70 (held by HUD) is not part of the forgiven \$194,053.74 amount.* Thank you." (Emphasis added). *Sec 'y. Stat., ¶ 9, Ex. 1-A.*

Herein, where the subject debt remains unsatisfied, the onus falls on Petitioner to produce evidence of a written release directly from HUD that specifically states that Petitioner has been discharged from the subject debt, or otherwise produce evidence of valuable consideration that for payment of the subject debt. Neither occurred in this case so, accordingly, the Court finds Petitioner's claim fails for lack of sufficient proof.

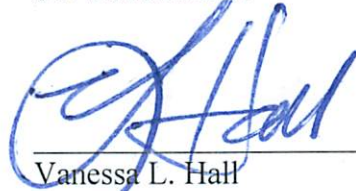
ORDER

Based on the foregoing, I find 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 on May 9, 2018 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 in the amount of \$278.71 biweekly, or an amount equal to 15% of Petitioner's 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 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.