

CORRECTED VERSION
(shaded portions only)

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

In the Matter of:

Carol Nelson,

Petitioner.

18-VH-0225-AG-116

721011362

October 30, 2019

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hearing Request*”) filed by Carol Nelson (“Petitioner”) on August 20, 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. § 3720D), authorizes federal agencies to use administrative wage garnishments 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 August 20, 2018, the Court stayed the issuance of a wage withholding order until the issuance of this written decision. *See Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”) at 2. On September 17, 2018, the Secretary filed a *Secretary’s Statement* along with documentation in support of her position. On February 28, 2019, Petitioner filed her *Petitioner’s Statement and Documentary Evidence* in support of his claim. 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, as a result of a defaulted loan that was insured against non-payment by the Secretary.

On or about April 10, 2015, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note") dated March 27, 2015 in the amount of \$9,337.64. *See Sec'y Stat.* ¶ 2; Ex. 1, Note. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured mortgage lender which was the holder of Petitioner's primary mortgage note. *See Sec'y Stat.*, ¶ 3; Ex. 2, *Declaration of Brian Dillon* ("*Dillon Decl.*"). In exchange for such funds, Petitioner executed the Note in the favor of the Secretary. *See Sec'y Stat.*, ¶ 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 April 1, 2045 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.

On or about June 9, 2016, the FHA mortgage on Petitioner's primary mortgage was terminated. *See Sec'y Stat.*, ¶ 5; *Dillon Decl.* ¶ 4. The Note became immediately due and payable, pursuant to the terms of the Note. *See Sec'y Stat.* ¶ 6; Ex. 2, *Dillon Decl.*, ¶ 4.

HUD's attempts to collect this alleged debt from Petitioner have been unsuccessful. *See Sec'y Stat.*, ¶6; *Dillon Decl.*, ¶ 5. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a. \$9,337.64 as the total unpaid principal balance as of July 30, 2018;
- b. \$93.36 as the unpaid interest on the principal balance at 1% per annum through July 30, 2018;
- c. \$562.13 as unpaid penalties through July 30, 2015;
- d. \$35.33 as unpaid administrative costs through July 30, 2018; and
- e. interest on said principal balance from July 31, 2018 at 1% per annum until paid.

See Sec'y Stat., ¶ 7, Ex. 2, *Dillon Decl.*, ¶ 5.

On August 8, 2018, a *Notice of Intent to Initiate Wage Garnishment Proceedings* ("*Notice*") was mailed to Petitioner. *See Sec'y Stat.*, ¶ 8; *Dillon Decl.*, ¶ 7. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement. Petitioner did not enter into a repayment agreement or pay the debt in full in response to the *Notice*. *Id.*

The Secretary proposes a repayment schedule of \$285.00 per month which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or an amount equal to 15% of Petitioner's disposable income. *See Sec'y Stat.*, ¶ 10.

DISCUSSION

Petitioner does not dispute the amount of the debt. Instead, Petitioner challenges the existence of the debt because he alleges that the subject debt has already been paid off by U.S. Bank on Petitioner's behalf. Along with his *Hearing Request*, Petitioner offered into evidence copies of her *Notice of Intent*, two letters from U.S. Bank dated May 3, 2016 (*May 2016 Letter*) and October 10, 2018 (*October 2018 Letter*) respectively; and an AT & T phone statement. *Hearing Request*, Attachments; *Petitioner's Documentary Evidence (Pet'r's Doc Evid.)* filed February 28, 2019.

For Petitioner to prove full satisfaction of the subject debt, there must be either a written release from HUD, or evidence of valuable consideration accepted by HUD from Petitioner. *See Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). After reviewing Petitioner's documentary evidence, the Court has determined that the evidence is insufficient as proof that the subject debt does not exist or is unenforceable. For Petitioner not to be held liable for the full amount of the debt, there must be either a release in writing directly from the former lender (herein HUD) 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 fails to support her contention that the subject debt does not exist because none of the documents show that Petitioner was released directly by HUD from her contractual obligation to pay this debt. First, the language in the *May 2016 Letter* refers to full payment of the HUD Partial Claim. But the *October 2018 Letter* offered as support by Petitioner specifically states:

Our records indicate that we sent you a notice, which you enclosed with your complaint, on May 3, 2016. **The notice indicated that the HUD Partial Claim in the amount of \$9,337.64 was paid in full on April 29, 2016. Please know that this Notice was sent in error and the HUD Partial Claim was not paid.** As such, we have remitted a check (enclosed) in the amount of \$13,047.11 to U.S. Treasury-DMS, P.O. Box 979101 St. Louis, MO 63197.

Emphasis added. *October 2018 Letter* at 1.

Further, the *October 2018 letter* states, "In regard to your concerns about your contact with Novad, the City of Bryant, and Allstate, we recommend that you contact these entities individually with your concerns as U.S. Bank cannot speak on their behalf." Whether Petitioner exercised due diligence thereafter and contacted NOVAD directly is unclear and not reflected in the record. In a case like this one, the onus falls on Petitioner, not U.S. Bank, to produce evidence of a written release directly from HUD that specifically states that Petitioner has been discharged from the subject debt, or otherwise provide evidence that proves valuable consideration has been paid in satisfaction of the subject debt. Neither occurred in this case. 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 enforceable." *See Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), *citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). So accordingly, the Court finds Petitioner's claim fails for lack of sufficient proof.

Petitioner's execution of the Note immediately obligated her to make a payment to HUD in the event that "the borrower has paid in full all amounts due under the primary Note and related mortgage, deed of trust or similar Security Instruments issued by the Secretary." *See Sec'y Stat.*, Ex. 1, Note ¶ 4(A)(i). The Note contained specific instructions on how and where payment should be made to the Secretary, and those instructions were unambiguous. *Id.* at Note ¶ 4(B). Petitioner's misunderstanding regarding the final payment of the subject debt does not serve as evidence of being release from her obligation to pay 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 response letter from the primary lender. See Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). The documentation offered by Petitioner is simply insufficient as proof that she was released from the subject debt. Because Petitioner has failed to produce evidence of a written release directly from HUD for her obligation to pay the subject debt, or evidence of valuable consideration paid by Petitioner to HUD in satisfaction of the subject debt, the Court finds that Petitioner has failed to meet her burden of proof to successfully refute or rebut the evidence presented by the Secretary.

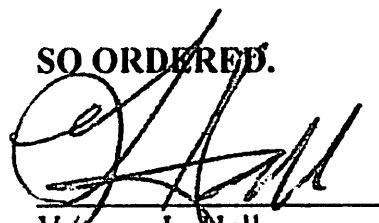
ORDER

Based on the foregoing, Petitioner remains contractually obligated to pay the subject debt.

The Order imposing the stay of referral of this matter issued on August 20, 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 of \$285.00 per month or an amount equal to 15% of Petitioner's disposable income.

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

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.