

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

In the Matter of:

Laura Eaton,

Petitioner,

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19-AM-0203-AG-060

721014359

June 16, 2020

DECISION AND ORDER

On or about September 10, 2019, Laura Eaton (“Petitioner”) filed a Request for Hearing concerning the 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 owed to the United States government.

The Secretary of HUD has designated the administrative judges of this Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts via administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81(b).

BACKGROUND

On or about November 9, 2012, Petitioner sought financial assistance from HUD to help her avoid possible mortgage foreclosure by Wells Fargo (“primary lender”). HUD loaned Petitioner the sum of \$7,694.33 to avoid default on her primary mortgage. (See Secretary’s Statement (“Sec’y Stat.”), ¶ 3; Exh. 2, Declaration of Brian Dillon, Director, HUD Asset Recovery Division, ¶ 4 (“Dillon Decl.”)). Petitioner executed and duly delivered a Partial Claims Subordinate Note (“Note”), evidencing this loan to HUD. (See Sec’y Stat., ¶ 2; Exh. 1, Note).

Under the Note’s terms, Petitioner was to pay the principal amount of the unpaid balance until the Note was paid in full. (Sec’y Stat., Exh. 1 ¶ 2). The Note cited specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable – one of which was the payment in full of her primary mortgage with Wells Fargo. (See Sec’y Stat. ¶ 4; Exh. 1 ¶ 3(A)(i)).

On or about July 23, 2018, Petitioner’s primary lender notified HUD that Petitioner’s primary note was paid in full. (Sec’y Stat., Exh. 2, Dillon Decl. ¶ 4). This information

automatically triggered the termination of the FHA Insurance on Petitioner's primary note. (See Sec'y Stat., ¶ 5; Exh. 2, Dillon Decl., ¶ 4; Exh. 1 ¶ 3).

Thereafter, HUD made its demand upon Petitioner to pay the amounts owed, but Petitioner failed to do so. As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$7,694.33 as the unpaid principal balance as of August 31, 2019;
- b) \$64.10 as the unpaid interest on the principal balance at 1.0% per annum through August 31, 2019;
- c) \$567.76 as the unpaid penalties and administrative costs through August 31, 2019; and
- d) interest on said principal balance from September 1, 2019, at 1.0% per annum until paid.

(See Sec'y Stat., ¶ 8; Exh. 2, Dillon Decl., ¶ 5).

On or about August 6, 2019, a Notice of Intent to Initiate Administrative Wage Garnishment Proceeding ("Notice") was sent to Petitioner. (See Sec'y Stat., ¶ 6; Exh. 2, Dillon Decl., ¶ 6). Petitioner has not entered into a written repayment agreement in response to the Notice. (See Sec'y Stat., ¶ 7; Exh. 2, Dillon Decl. ¶ 7).

DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. (See 31 C.F.R. § 285.11(f)(8)(i)). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. (See 31 C.F.R. § 285.11(f)(8)(ii)). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause undue hardship to Petitioner, or that the alleged debt is legally unenforceable. Id.

As evidence of the Petitioner's indebtedness, the Secretary has filed the Secretary's Statement (Sec'y Stat.) along with a sworn declaration (Exh. 2, Dillon Decl.) by Brian Dillon, Director, Asset Recovery Division; and a copy of the Note. Accordingly, the Court finds that the Secretary has met the initial burden of proof.

Petitioner's Hearing Request states that she does not owe the debt evidenced by her Note to HUD. (See Sec'y Stat., ¶ 9). Specifically, Petitioner stated that she does not owe this debt because she paid her loan in full to her primary lender. (Pet'r Aug. 23 Ltr.; Pet'r Aug. 28 Email). However, the debt that is the subject of this proceeding is owed to HUD and is separate from Petitioner's obligation to her primary lender, Wells Fargo. And, under the terms of the Note between Petitioner and HUD, full payment of the principal amount to the primary lender triggers Petitioner's obligation to repay the Note to HUD. (See Sec'y Stat., ¶ 4; Exh. 1, ¶ 3).

Moreover, as proof that Petitioner has paid the subject debt, she must submit evidence of either (1) a written release from HUD showing that the Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her legal obligation. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005).

Here, petitioner has not provided any such evidence to show that the amounts claimed by the Secretary were repaid. Instead, Petitioner submitted a letter stating that she sent documents to the U.S. Department of the Treasury (“Treasury”) showing that she repaid the debt, and that the Treasury subsequently removed the loan from her credit report. (Pet’r Aug. 23 Ltr.; Pet’r Aug. 28 Email). However, Petitioner did not provide any of those documents to the Court. She has not provided either a written release from HUD showing that she is no longer liable for the debt, or evidence of valid or valuable consideration paid to HUD to release her from her legal obligation to pay the debt. Petitioner’s assertions that she has paid the debt are not supported by evidence. Accordingly, Petitioner has failed to prove that the debt claimed by the Secretary is not past due or enforceable. See Michael R. Bridges, HUDOHA No. 13-AM-0125-AG-054 (Aug. 13, 2013) (“Assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.”); Eric and Eliza Rodriguez, HUDOHA No. 13-AM-0061-AG-023 (Apr. 17, 2013) (citing Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (Mar. 23, 2005)); Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

Upon consideration of the evidence and arguments provided by the parties, including the Petitioner’s *Hearing Request*, the *Secretary’s Statement*, and all accompanying documentation, the Court finds that Petitioner has not met her burden to prove that she is not indebted to HUD in the amounts claimed by the Secretary. The Court therefore finds in favor of the Secretary as to the amounts set forth in the *Secretary’s Statement*.

ORDER

For the reasons set forth above, I find the debt that is subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is

ORDERED that 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

FURTHER ORDERED that the Secretary is authorized to collect the debt in this case by means of administrative wage garnishment in the amount of either \$300 per month or 15% of Petitioner's monthly disposable income, whichever is less.

SO ORDERED,



H. Alexander Manuel
Administrative Judge

APPEAL NOTICE: You have the right to move for reconsideration of this case before the HUD Office of Hearings and Appeals within 20 days of the date of this ruling or decision; or, thereafter, to reopen this case. Ordinarily, such motions will not be granted absent a showing of compelling legal argument or new evidence that could not have been previously presented. You may also appeal this decision to the appropriate United States District Court. For wage garnishment cases, *See* 24 C.F.R. § 17.81, 31 C.F.R. § 285.11(f), and 5 U.S.C. 701, *et seq.* For administrative offset cases, *See* 24 C.F.R. § 17.73(a), and 5 U.S.C. § 701, *et seq.*