

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

In the Matter of	:	
	:	
	:	21-AM-0013-AG-009
Leanne Steele a.k.a. Leanne Reed,	:	
	:	721014198
	:	
Petitioner,	:	July 5, 2022
	:	

DECISION AND ORDER

On or about October 13, 2020, Leanne Steele a.k.a. Leanne Reed, (“Petitioner”) filed a *Request for Hearing* concerning the amount and enforceability of an alleged debt 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 the Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts utilizing administrative wage garnishment proceedings. 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 August 5, 2013, Petitioner sought financial assistance from HUD to help her avoid possible foreclosure of her mortgage with her primary lender. (*See Secretary's Statement*, (“*Sec’y Stat.*”), ¶¶ 3-4; Exh. A, Declaration of Gary Sautter, Acting Director of Asset Recovery Division, HUD Financial Operations Center (“Sautter Decl.”), ¶ 4). HUD loaned Petitioner the sum of \$21,656.83 to help her avoid defaulting on her primary mortgage. (*See Sec’y Stat.*, ¶ 4; Exh. B, Subordinate Note, dated August 5, 2013 (“Note”), ¶ 2). In exchange, Petitioner executed and duly delivered a subordinate note (“Note”), evidencing this loan to HUD. *Id.* Under the terms of the Note, Petitioner was to pay the principal amount of the unpaid balance on the Note until it was paid in full. (*See Exh. B, Note*, ¶ 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 when Petitioner's underlying mortgage to her primary lender was paid in full. (*See Sec’y Stat.*, ¶ 5; Exh. A, Dillon Decl., ¶ 4; Exh. B, Note, ¶ 4(A)(i)).

On or about July 18, 2018, Petitioner's primary lender notified HUD that Petitioner's underlying mortgage had been paid in full. (*See Sec’y Stat.*, ¶ 6; Exh. A, Dillon Decl. ¶ 4). This automatically triggered the provisions of ¶ 4(A)(i) of the Note, requiring Petitioner to pay the full amount owed under the Note to HUD. (*See Sec’y Stat.*, ¶ 7; Exh. B, Note, ¶ 4(A)(i)). Thereafter,

HUD attempted to collect the amounts owed from Petitioner, but Petitioner failed to pay. (*Sec’y Stat.*, ¶ 9; Exh. A, Sautter Decl., ¶ 5). As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$21,656.83 as the unpaid principal balance as of October 30, 2020;
- b) \$432.96 as the unpaid interest on the principal balance at 1% per annum through October 30, 2020;
- c) \$889.88 as the unpaid penalties and administrative costs as of October 30, 2020; and
- d) Interest on said principal balance from November 1, 2020, at 1% per annum until paid.

(*Sec’y Stat.*, ¶ 9; Exh. A, Sautter Decl., ¶ 5).

On or about July 6, 2020, a Notice of Intent to Initiate Wage Garnishment Proceedings (“Notice”) was mailed to Petitioner. (*See Sec’y Stat.*, ¶ 10; Exh. A, Sautter Decl., ¶ 6). Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was given an opportunity to enter into a written repayment agreement under terms acceptable to HUD, which she has not done. (*Sec’y Stat.*, ¶ 11; Exh. A, Sautter Decl., ¶ 7). Petitioner has not provided a copy of her most recent pay statement to HUD and as a result, the Secretary has proposed a repayment schedule of \$660.00 per month to liquidate the debt within three years, in accordance with the Federal Claims Collection Standards, or in the alternative, 15% of the Petitioner’s disposable income. (*See Sec’y Stat.*, ¶ 13; Exh. A, Dillon Decl., ¶ 8)

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)). Thereafter, Petitioner 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 Petitioner’s indebtedness, the Secretary has filed the *Secretary’s Statement* (*Sec’y Stat.*) along with the sworn Declaration of Gary Sautter, Acting Director of Asset Recovery Division, HUD Financial Operations Center (Exh. A, Sautter Decl.), and a copy of the Note (Exh. B, Note). The Secretary has also filed the *Supplemental Secretary’s Statement* (“*Supp. Sec’y Stat.*”), along with the Supplemental Declaration of Brian Dillon, Director of Asset Recovery Division, HUD Financial Operations Center (Exh. C, Supp. Dillon Decl.), which includes the Notice (Supp. Exh. A, Notice), Petitioner’s account information from the Department of the Treasury (Supp. Exh. B, Treasury Account Information), DCMS case remarks regarding Petitioner’s file (Supp. Exh. C, DCMS Case Remarks), and a copy of the letter from Petitioner’s attorney sent with her *Request for Hearing* (Supp. Exh. D, Petitioner’s letter with her

Request for Hearing). Accordingly, this Court finds that the Secretary has met her initial burden of proof.

In her *Request for Hearing*, as well as in a statement, Petitioner claims she never received the Notice at least 30 days prior to the initiation of wage garnishment as required under 31 U.S.C. § 3720D(b)(2). (*See Request for Hearing*; Statement of Petitioner, ¶ 4). Petitioner further claims that she was not afforded an opportunity to inspect and copy records relating to her debt, and that she was not afforded an opportunity for a hearing. (*See* Statement of Petitioner, ¶¶ 4-6.). Petitioner also contends that the alleged debt is not enforceable against her on the grounds that when she sold her home, the closing attorneys failed to conduct a proper title inspection to determine the existence of the debt, and therefore, Petitioner believed the debt had been satisfied by the proceeds from the sale of the property. (*See* Affidavit of Leanne Steel a/k/a Leanne Reed; Statement of Petitioner, ¶¶ 2-3). Apart from these allegations, Petitioner does not provide any documentary evidence that the alleged debt is not past due or that it is unenforceable.

In response to *Petitioner's Request for Hearing*, the Secretary produced the *Secretary's Statement*, which argues that the Note is due and enforceable because Petitioner has not submitted any documentary evidence to the contrary. (*See Sec'y Stat.*, ¶ 12). In response to Petitioner's Statement and affidavit, the Secretary filed the *Supplemental Secretary's Statement*, addressing each of Petitioner's contentions and attaching records from the Debt Management and Collections System ("DMCS") and Department of the Treasury showing that the Notice was sent to Petitioner. (*See Supp. Sec'y Stat.*, ¶ 7; Supp. Exh. A, Notice; Supp. Exh. B, Treasury Account Information).

Petitioner has not provided documentary evidence that she did not receive the Notice, and HUD maintains, through DCMS and Department of the Treasury records, that the Notice was sent to Petitioner's last known address. (*See* Exh. C., Dillon Decl., ¶ 4; Supp. Exh. B, Treasury Account Information; Supp. Exh. C, DMCS Case Remarks). Therefore, I find that HUD complied with its obligation to notify Petitioner of the impending wage garnishment proceedings.

Petitioner's second claim that she was not afforded the opportunity to inspect and copy records related to her debt is unsupported. The Notice specifically stated, "[y]ou may inspect and copy the Federal Agency's records related to your debt by writing us or calling us at the address and telephone number listed below." (*See* Supp. Exh. A, Notice). Notwithstanding whether Petitioner received the Notice, I find that HUD did not deny Petitioner the opportunity to inspect or copy her records because Petitioner never requested to inspect or copy the records.

Petitioner's third claim that she was not afforded a hearing in accordance with 31 U.S.C. § 3720(D)(b)(5) is also baseless, given that the present proceeding is the very hearing requested by Petitioner, which was conveyed to Petitioner in the *Notice of Docketing*. (*See Notice of Docketing, Order, and Stay of Referral* (stating "[t]his hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, 31 U.S.C. § 3720D")). I find that Petitioner was afforded a hearing in accordance with 31 U.S.C. § 3720(D)(b)(5).

Lastly, Petitioner has not shown that the debt is not due and enforceable. Petitioner has not provided any evidence that she relied upon statements made by HUD that her debt was satisfied. Petitioner has not shown that she or her closing attorney satisfied Petitioner's outstanding lien with HUD. Petitioner's mere assertions that her closing attorney is responsible for the debt are insufficient evidence to establish that HUD may not enforce the Note against her. (See *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)). Moreover, Petitioner has not proven that she has repaid the Note in full.

Petitioner has not provided evidence of any release from HUD of her obligation to repay the Note. (See *Sec'y Stat.*, ¶ 12). For the debt to be extinguished, HUD must provide a written release that specifically discharges the debtor's obligation, for valuable consideration accepted by the lender from the debtor, which would indicate intent to release. (See *Franklin Harper*, HUDBCA No. 04-D-CH-AWG41 (March 23, 30050); *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); *Cecil F. & Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986)); *Jesus E. & Rita de los Santos*, HUDBCA No. 86-1255-F262) (February 28, 1986)). In this case, HUD maintains it has not released Petitioner, and Petitioner has provided no documentary evidence that she received a release from HUD. (See *Supp. Sec'y Stat.*, ¶ 12).

The idea that the Petitioner is not responsible for the debt when HUD has not released her is entirely without merit. Petitioner provides no legal authority or language in the Note that suggests that the Note was paid or that another party is responsible for the Note. Further, HUD, as a third-party creditor, is not bound by any debt transfer agreement Petitioner and her attorney or another party. (See *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003) (citing *Wendy Kath*, HUDBCA No. 89-4518-L8, at 2)). Therefore, I find that, in the absence of documentary evidence showing that the Note was paid or that HUD released the debt obligation, the Note is due and enforceable, and Petitioner remains indebted to HUD, notwithstanding any dispute with her closing attorney.

Petitioner has failed to submit any documentary evidence to prove that she is not indebted to the Department. I therefore find that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

DETERMINING REPAYMENT

Petitioner has failed to come forward with sufficient financial information to establish that repayment of this debt would create undue financial hardship. In the absence of documentary evidence from Petitioner, such as a recent pay statement or essential household expenses, this Court determines that the proposed garnishment would not create undue hardship for the Petitioner. Therefore, the Secretary is entitled to enforce the debt in the amount of \$660.00, or 15% of Petitioner's disposable monthly pay.

If Petitioner seeks to negotiate a repayment schedule with the HUD, she should be aware that this Court only has the authority to make a "determination of whether the debt is enforceable and past due." (See *Edgar Joyner Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005)). This Court does not have the authority to establish "a debtor's repayment amount or a schedule of

payments.” *Id.* As such, while Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to “extend, recommend or accept any payment plan or settlement offer on behalf of the Department.” *Id.* If Petitioner wishes to discuss a payment plan, Petitioner may discuss the matter with Michael DeMarco, Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859, or write to HUD Financial Operations Center at 50 Corporate Circle, Albany, NY 12203-5121. Petitioner is also entitled to seek reassessment of this financial hardship determination in the event that she experiences materially changed financial circumstances. (*See* 31 C.F.R. §285.11(k)).

ORDER

For the reasons set forth above, I find the debt that is the 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**. The Secretary is authorized to seek administrative wage garnishment in the amount of \$660.00 monthly, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner’s disposable income per month.

SO ORDERED,



H. Alexander Manuel
Administrative Judge