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

In the Matter of: **Sabryia Reynolds,** Petitioner	22-VH-0075-AG-055 721013364 December 14, 2023

DECISION AND ORDER

On January 12, 2022, Sabryia Reynolds ("Petitioner") filed a 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 January 14, 2022, 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, 2022 the Secretary filed her *Statement* along with documentation in support of her position. On January 13, 2022 and May 16, 2022, Petitioner, through counsel, filed his *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, because of a defaulted loan that was insured against non-payment by the Secretary.

According to the *Secretary's Statement*, as a means of providing foreclosure relief, HUD advanced funds to the FHA to bring the Petitioners mortgage current. In exchange for foreclosure relief, Petitioner executed a Subordinate Note ("Note") in the amount of $21, 120.44 in favor of the Secretary. Paragraph 4(A) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note.

On or about January 8, 2018, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. Upon payment in full or termination of FHA insurance on the primary note, Petitioner was to make payment to HUD on the Note at Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington DC 20410, or any such other place as [HUD] may designate in writing by notice to Borrower. Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent.

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts:

(a) $12,547.24 as the unpaid principal balance as of January 6, 2022;

(b) $0.00 as the unpaid interest on the principal balance at 1% per annum through January 6, 2022;

(c) $0.00 as the unpaid penalties and unpaid administrative cost as of January 6, 2022.

(d) interest on said principal balance from January 7, 2022, at 1% per annum until paid.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated October 9, 2018 was sent to Petitioner at 1905 N Dinwiddie Street, Arlington Virginia 22207. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. To date, Petitioner did not enter into a written repayment agreement based on the October 9, 2021 Notice.

A Wage Garnishment was sent to Petitioner's employer on November 8, 2018. A total of $13,414.74 has been garnished from Petitioner, 71 times in the amount of $188.94 each. These amounts have been reflected in the amount previously stated as the amount due. According to the Secretary, the total garnishment amount collected thus far is different from HUD's calculation of what is now due as the balance.

The Debt Collection Improvement Act of 1996 ("DCIA") requires HUD to refer delinquent debts to the U.S. Department of the Treasury ("Treasury") for collection. 31 U.S.C. § 3711(g). Once HUD sends a debt to Treasury, Treasury is authorized to charge HUD a fee for its collection efforts. 31 U.S.C. § 3711(g)(6). Those fees are passed on to the debtor. HUD is also required to charge the debtor interest, administrative costs, and penalties. 31 U.S.C. § 3717(a) 86 (e)(1)-(2). Fees and administrative costs (which includes the fee charged by Treasury) total 30% of any amount collected by Treasury. Payments made by the debtor are first applied to fees, then interest, and then principal. 31 C.F.R. § 901.9(f). Petitioner provided copies of her bi-weekly payment statements ending November 15, 2021, with her Hearing Request.

Based on the foregoing, the Secretary requests that the administrative wage garnishment be authorized at 15% of Petitioner's disposable pay which "would result in a weekly repayment garnishment schedule of $237.14."

DISCUSSION

Petitioner first contends in her *Statement* that she was unaware that the subject debt existed; and second, contends that the signature on the Note was forged. As support, Petitioner presents as evidence a copy of her *Consumer Financial Statement* and copies of supporting documentation submitted as support for the hardship claim she filed with the Treasury Department. Petitioner did not raise a hardship claim in this case.

The Court first will address Petitioner's contention that she was unaware of the debt's existence. Here Petitioner claims, through counsel, that when she "subsequently sold her Property in 2018 and after the closing, she learned that there was a second mortgage with a balance of $21,120.44 remaining on the Property. Although Petitioner retained Mobility Title to assist with the sale of the Property and perform a title search, Mobility Title did not flag the second mortgage for Ms. Reynolds." She further claims, through counsel, that "Fidelity never represented to Ms. Reynolds that she would be obtaining a second mortgage on the Property, nor does Ms. Reynolds recall signing any documents with Fidelity or any entity regarding a second mortgage. Ms. Reynolds was not aware of this debt when she closed on the Property and therefore was not given the opportunity to pay the debt from the proceeds from the sale of the Property." As a result, Petitioner maintains that she was "unaware of the subject debt so she defaulted on payments on the debt."

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), the burden of proof is on the Petitioner to show, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect, or otherwise prove that collection of the same may not be pursued due to operation of law. Petitioner's claim that she was unaware of the Note's existence is not, alone, a valid defense in this case. It is well established that ignorance of the existence of a Note or whether a note was HUD-insured is not a defense against HUD's ability to pursue enforcement of such note. See Lani B. Park, HUDBCA No. 990A-CH-Y302 (May 2000). Here, the record not only shows that Petitioner was made aware of the Note when the collection activity by wage garnishment commenced on November 8, 2018, but collections continued, without Petitioner's objection, for a total of 71

payments towards the balance owed. Petitioner's receipt of the loan proceeds, and subsequent payments towards the balance owed, show that Petitioner was aware of the loan's existence and thereafter accepted responsibility for the subject debt. Without evidence to prove otherwise, the Court must find that Petitioner knew the subject debt existed and that Petitioner remains responsible for payment of the remaining balance.

Next, Petitioner claims the signature on the Note is forged and thus fraudulent. In forgery cases like the instant case, "If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized…" Uniform Commercial Code (UCC) § 3-308(a).[1] Based on this premise, Petitioner's signature is presumed to be authentic and authorized unless proven otherwise. To refute or rebut this presumption the Court must determine whether the evidence presented by Petitioner is sufficient to support a claim of forgery.

Relying on guidance from the UCC, the burden of proof falls on Petitioner to introduce evidence that supports whether the signature in question is unauthorized or forged, before the Secretary must prove that the signature on the Note is valid. Official comment 1 to UCC § 3-308; see also Justito Poblete, HUDBCA No. 98-A-SE-W302 (April 30, 2010). "Administrative judges are not handwriting experts, and thus, must depend on the scientific testimony of experts in order to find that forgery has occurred." In the Matter of Lawrence Syrovatka, HUDOA No. 07-A-CH-HH10 (November 18, 2008). Without expert testimony the evidence presented by Petitioner, thus far, is sorely lacking. For example, such expert testimony might have included an official police report of forgery, or an expert testimony of a handwriting analysis of the signature Petitioner claimed was forged. In the absence of such evidence, this claim shall fail. This Court has consistently maintained that "assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due and legally enforceable." Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Hence, the Court must find that Petitioner's claim of forgery fails for lack of proof.

Moreover, even if there had been a finding of forgery, Petitioner's act of retaining the loan proceeds and her subsequent actions of making payments towards the loan balance together served as a retroactive adoption of the alleged unauthorized signature. The Court deemed such actions to be acts of ratification. Ratification is defined as "a retroactive adoption of the unauthorized signature by the person whose name is signed and may be found from conduct as well as from express statements." See Official Comment 3, to Uniform Commercial Code § 3-403. For example, ratification may be found "from the retention of benefits received in the transaction with knowledge of the unauthorized signature." Id. Ratification also has been defined as "a voluntary act which was purportedly done on Petitioner's behalf by another person, the effect of which is to treat the act as if originally authorized by him." In the Matter of Shirley Thomson, HUDOA No. 09-M-NY-KK07, dated April 16, 2009. Therefore, the Court finds further that Petitioner's claim of forgery is without merit because, even if forgery had been established, Petitioner's subsequent acts of ratification retroactively adopted the unauthorized signature.

[1] While the Uniform Commercial Code (UCC) is usually not binding in an administrative proceeding, the court can rely upon the guidance provided by the UCC.

ORDER

Based on the foregoing, the Order issued on January 14, 2022 that imposed the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is hereby **VACATED.**

The Secretary is authorized to seek 15% of Petitioner's disposable pay in satisfaction of the debt due and now enforceable.

SO ORDERED.

Vanessa L. Hall
Administrative Judge

Finality of Decision. Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq*.).