

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

In the Matter of:

Teresa Holder,

Petitioner

22-VH-0097-AG-069

721016793

December 21, 2023

DECISION AND ORDER

On January 20, 2022, Teresa Holder (“Petitioner”) filed a hearing request, along with limited documentary evidence, 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 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 January 28, 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 February 10, 2022, the Secretary filed his *Statement* along with documentation in support of his position. On November 23, 2022, Petitioner filed a *Statement* along with documentary evidence in support of her claim of that the subject was paid in full. 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.

In the Secretary's *Statement* she contends that in order to provide foreclosure relief, HUD advanced funds to the FHA insured lender to bring the Petitioner's mortgage current. On March 15, 2019, Teresa Holder executed and delivered a Subordinate Note ("Note") to HUD in the amount of \$19,197.24. The Note cited specific events making the debt become due and payable, including when all amounts due under the primary note and related mortgage are paid in full, and when the Note is no longer insured by HUD.

On or about October 1, 2019, the FHA insurance on the primary mortgage was terminated as the lender indicated that the mortgage was paid in full. Upon the full payment of the primary note, the subordinate note became due and payable. According to the Secretary, upon the termination of the FHA insurance on the primary mortgage, the subordinate note became due and payable. Petitioner failed to make payment on the Note at the place and in the amount specified. Consequently, Petitioner's debt to HUD is delinquent.

Petitioner is currently in default on the Note. The Secretary has made efforts to collect from Petitioner but has been unsuccessful. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$19,197.24 as the unpaid principal balance as of 1/31/2022;
- (b) \$768.00 as the unpaid interest on the principal balance at 2.0% per annum through 1/31/2022;
- (c) \$732.54 as the unpaid penalties and administrative fees through 1/31/2022; and
- (d) 2% interest on said principal balance from 2/1/2022 until
paid.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated December 9, 2021, was sent to Petitioner. 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 has not entered into a written repayment agreement.

HUD has attempted to obtain a current paystub from Petitioner, but Petitioner has not provided one. The Secretary's proposed repayment schedule is \$580.69 per month which will liquidate the debt within three years as proposed by the Federal Claims Collection Standards or 15% of Petitioner's disposable pay. Based on the foregoing, the Secretary respectfully requests

that the Court find Petitioner's debt past due and legally enforceable and Secretary's Proposed Repayment Schedule is fair.

DISCUSSION

Petitioner claims that she does not owe the debt because it was allegedly paid off when her home was sold. Petitioner further claims that her "taxes and check payments were taken" and questioned the whereabouts of those funds when the loan agreement as she understood had already been paid. As support, Petitioner introduced into evidence a copy of an alleged payoff letter from Midland Mortgage to Petitioner.

After reviewing Petitioner's documentary evidence, the Court has determined that Petitioner's burden of proof has not been met. For Petitioner not to be held liable for the full amount of the subject debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). In this case, Petitioner has failed to present sufficient documentary evidence that demonstrates that the subject debt was actually paid in full. What was offered by Petitioner was a copy of a letter that provided a quote of a projected payoff amount and reflected the balance of the same. There was no indication from the letter provided that supported Petitioner's allegation that the subject debt was already paid. As a result, Petitioner's claim fails for lack of proof.

Because Petitioner has failed to produce evidence of a written release from her obligation to pay the subject debt, or of valuable consideration paid to HUD in satisfaction of the debt, the Court finds that Petitioner has failed to meet her burden of proof. It is well established 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). Therefore, consistent with case law precedent, the Court must find that the subject debt remains enforceable against Petitioner.

ORDER

Based on the foregoing, Petitioner shall pay the debt so claimed in the amount requested by the Secretary.

The *Order* imposing the stay of referral of this matter to the U.S. Department of 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 at 15% of Petitioner's monthly disposable pay.

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.*).

