

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS
Washington, D.C.

In the Matter of : HUDOA No: 20-AM-0108-AG-062
: HUD Claim No.: 721015736
TERRIE LECLAIR, :
: Petitioner. :
: March 29, 2023

DECISION AND ORDER

On or about March 3, 2020, (“Petitioner”) filed a Request for Hearing concerning the amount, enforceability, or payment schedule 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.

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 by means of 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.

BACKGROUND

Terrie LeClair (“Petitioner”) executed and delivered to the Secretary a Subordinate Note (“Note”) dated July 28, 2010, in the amount of \$24,293.06. *See Secretary’s Statement*, dated April 2, 2020, (“*Sec’y. Stat.*”), the Note, attached as Exhibit 1. Petitioner executed the Note in order to prevent her property from going into foreclosure proceeds. HUD advanced funds to Petitioner’s FHA-insured mortgage lender. The proceeds of the Note were applied to Petitioner’s primary mortgage with her lender. The Note was made payable to the Secretary of the U.S. Department of Housing and Urban Development. *See Sec’y. Stat.*, Exhibit 2, *Declaration of Brian Dillon*, Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center, (“*Dillon Decl.*”) ¶ 4.

Under the terms of the Note, the amount to be repaid thereunder becomes due and payable "[o]n August 1, 2038 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." Note, ¶ 4(A).

On or about May 8, 2019, the Petitioner's first mortgage was paid in full and the FHA mortgage insurance was terminated, an event that caused the Note to become due and payable. *Dillon Decl.*, ¶14; Note, ¶ 4. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Dillon Decl.*, ¶ 5. A Notice of Intent to Initiate Administrative Wage Garnishment Proceeding, dated January 13, 2020, was mailed to Petitioner's last-known address. *Dillon Decl.*, ¶ 6.

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, which could have avoided issuance of a wage garnishment order to Petitioner's employer. However, to date, the Secretary alleges that Petitioner has not entered into any such agreement. *Dillon Decl.*, ¶ 7.

The Secretary alleges that Petitioner is indebted to the Secretary in the following amounts:

- a. \$24,293.06 as the total unpaid principal balance as of February 29, 2020;
- b. \$121.44 as the unpaid interest on the principal balance at 1% per annum as of February 29, 2020;
- c. \$1,567.00 as the unpaid penalties and administrative costs as of February 29, 2020; and
- d. interest on said principal balance from March 1, 2020 at 1% per annum until paid.

Dillon Decl., ¶ 5.

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 an 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*, together with an accompanying sworn declaration by Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center, *Sec'y Stat.*, Ex. 2; and copies of the Note, and accompanying notices and documents. (*See Sec'y Stat.*, Ex. 1). The Court finds the Director's diligence in analyzing Petitioner's claim, and the Director's explanation of that review to be sufficient to prove that Petitioner is indebted to the Department in the amounts claimed by the Secretary. Accordingly, the Court finds that the Secretary has met the Secretary's initial burden of proof.

Petitioner seeks to establish that the alleged debt in this case is not owed, not properly calculated, or is not legally enforceable. Petitioner has filed the *Hearing Request*, dated March 3, 2020, as proof that the debt is not owed. Petitioner has not brought forth any evidence to show that the amounts claimed by the Secretary were

incorrectly calculated. 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 *Michael R. Bridges*, HUDOHA No. 13-AM-0125-AG-054 (August 13, 2013); *Eric and Eliza Rodriguez*, HUDOHA No. 13-AM-0061-AG-023 (April 17, 2013)(citing *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 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)).

Petitioner has provided no documentation to demonstrate that HUD's Note was repaid in full. Petitioner has also not provided any evidence to prove that she was released by HUD from her obligation to repay the debt owed pursuant to the Note. *Dillon Decl.*, ¶ 9-10.

Petitioner has the burden of producing evidence which demonstrates that the claimed debt is not past-due or legally enforceable. See *Michael Cook*, HUDBCA No. 87- 2782-H307 (Aug. 11, 1988). "Assertions without evidence are not sufficient to show that a debt claimed by the Secretary is not past due or unenforceable." *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009); 31 C.F.R. 285.11(f)(8)(ii); *Sara Hedden*, HUDOA No. 09-H-NY-AWG95 (July 8, 2009); *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). This Court has held that the Secretary's right to collect the debt claimed emanates from the terms of the Note. *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007).

In order to extinguish the debt, there must be a release, in writing, from the lender—in this case HUD—specifically discharging Petitioner's obligation, for valuable consideration accepted by the lender from Petitioner, which would indicate intent to release. *Franklin Harper*, HUDBCA No. 04-D-CH-AWG41 (March 23, 2005); *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). Petitioner has not provided any evidence of a valid release from her obligation by HUD.

Petitioner incurred legal liability when she signed the Note and accepted and agreed to the terms contained therein. “A third party’s error or negligence does not normally relieve Petitioner of liability for the debt... Petitioner’s obligation to pay the debt derives from the terms of the Note.” *Stephond West*, HUDOA No. 17-AM-0026-AG-006 (March 14, 2018), citing *Bryan McClees*, HUDOA No. 17-AM-0037-AO-010 (February 14, 2018) and *Cydine A. Taylor*, HUDOA No. 14-AM-0063-AO-005 (October 22, 2014). Also see, *Judith Herrera*, HUDOA No. 12-M-CH-AWG27 (July 12, 2012) (wherein, this

Court found that a statement to petitioner by a title company that “all was okay and petitioner did not owe debt” was insufficient evidence to prove that HUD had been paid).

For Petitioner to avoid liability for the debt, there must be a release, in writing, from the lender specifically discharging Petitioner’s obligation, for valuable consideration accepted by the lender from Petitioner, which would indicate intent to release. Franklin Harper, HUDBCA No. 04-D- CH-AWG41 (March 23, 2005); JoDean 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. 86-1255F262 (February 28, 1986). In this case, Petitioner has submitted no evidence that demonstrates that she received a valid release from HUD.

The evidence clearly shows that Petitioner executed the Note, and did not repay it. Accordingly, the Court finds that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

Petitioner has also not filed documentary evidence to prove that undue financial hardship would be created by imposition of a repayment schedule. However, Petitioner’s *Hearing Request* states that Petitioner is a single mother who is homeless, and who has not held full time employment since the onset of the Covid pandemic. Under these circumstances, it is difficult to envision that Petitioner meets the criteria set forth in 31 CFR §285.11(j) regarding eligibility for imposition of an administrative wage garnishment. However, in the absence of documentary evidence demonstrating Petitioner’s current employment status, the Court authorizes the imposition of a repayment schedule at the amount of 15% of Petitioner’s disposable pay, or the maximum amount authorized by law.

This Court has authority to mitigate payments in determining whether financial hardship would be imposed in particular cases, but the Court does not have the authority to establish “a debtor’s repayment amount or a schedule of payments.” 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. If Petitioner wishes to discuss a payment plan, Petitioner may discuss the matter with Michael DeMarco the Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859 or write to HUD Financial Operation Center, 50 Corporate Circle, Albany, NY 12203-5121. Petitioner is also entitled to seek reassessment of this financial hardship determination in the future in the event that she experiences materially-changed financial circumstances. *See* 31 C.F.R. §285.11(k).

ORDER

It is hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15% of Petitioner's disposable pay for each pay period, or as authorized by law. It is

FURTHER ORDERED that the Stay of Referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment issued on or about March 3, 2020, is hereby **VACATED**.

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 demonstration by the movant that there is substantial new evidence to be presented that could not have been presented previously. An appeal may also be taken of this decision to the appropriate United States District Court. For wage garnishments cases, See 24 C.F.R. § 17.81, 31 C.F.R. § 285.119f), 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.