

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

In the Matter of:

Erica Heath,

Petitioner

20-VH-0268-AG-168

780812324

November 17, 2021

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hearing Request*”) filed by Erica Heath (“Petitioner”) on August 21, 2020, concerning the existence, amount, or 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 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 August 26, 2020, the Court stayed the issuance of a wage withholding order until the issuance of this written decision. *See Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”) at 2. On October 23, 2020, the Secretary filed a *Secretary’s Statement* along with documentation in support of her position. The Court then issued Orders on December 17, 2020 and March 4, 2021 to Petitioner to respond accordingly. On March 9, 2021, Petitioner filed a *Petitioner’s Statement and Documentary Evidence* in support of her claims. 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, as a result of a defaulted loan that was insured against non-payment by the Secretary.

Erica Heath (“Petitioner”) and Travis Heath executed a Title I Note—Secured Step Down (referred to herein as the “Note”), dated December 24, 2018, in the amount of \$25,000.00. *Sec’y Stat.* ¶ 2; Ex. 1, Note. The Note was insured against nonpayment default by Secretary pursuant to Title I of the National Housing Act. *Sec’y Stat.*, ¶ 3; Ex. 2, *Declaration of Brian Dillon*¹ (“*Dillon Decl.*”)

The Petitioner defaulted on the Note by failing to make payments as agreed in the Note. The Note was subsequently assigned to HUD pursuant to the regulations governing the Title I Insurance Program. *Sec’y Stat.*, ¶ 4, Ex. 2, *Dillon Decl.* ¶ 3. HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec’y Stat.*, ¶ 5, Ex. 2, *Dillon Decl.* ¶4.

Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$24,517.75 as the unpaid principal balance as of August 31, 2020;
- b. \$981.83 as the unpaid interest on the principal balance at 2.0% per annum through August 31, 2020;
- c. \$1,572.45 as the unpaid penalties and administrative costs as of August 31, 2020; and,
- d. interest on said principal balance from September 1, 2020 at 2.0% per annum until paid.

Sec’y Stat., ¶ 6, Ex. 2, *Dillon Decl.* ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated August 13, 2020, was mailed to Petitioner’s last known address. *Sec’y Stat.*, ¶ 7, Ex. 2, *Dillon Decl.* ¶ 5. In accordance with the Notice and 31 C.F.R. 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD. However, to date, Petitioner has not entered into any such agreement. *Sec’y Stat.*, ¶ 8, Ex. 2, *Dillon Decl.* ¶ 6.

The Secretary proposes a garnishment repayment schedule in the amount of \$104.75 per bi-weekly pay period, or an amount equal to 10% of Petitioner’s disposable pay. *Sec’y Stat.*, ¶ 10, Ex. 2, *Dillon Decl.* ¶ 7-8.

DISCUSSION

Petitioner claims that she is not responsible for payment of the subject debt because: (1) her ex-spouse forged her signature on documentations associated with the subject debt; and (2)

¹ Brian Dillon is the Director of Asset Recovery Division for the U.S. Housing and Urban Development.

because of the forgery, the ex-spouse should be held responsible for the subject debt. In addition, Petitioner claims financial hardship.

First, Petitioner more specifically claims:

My ex-husband has continuously forged my name on documents. The first document is a document for this HUD agreement that he forged my name on then the second one is another document unrelated [that] he forged my name on. I've provided both to show the pattern of him forging my name. We are divorced & he received the house in the divorce. The solar panels are attached to the house. I should not be responsible for this debt period. There is now a lien on my taxes.

As proof of her claim of forgery, Petitioner offered into evidence copies of two documents, one she claims was the HUD agreement associated with the subject debt bearing the alleged forged signature, and another document, unrelated to the subject debt, also bearing an alleged forgery of her signature by her ex-spouse. Petitioner maintains that both documents together prove that her ex-spouse has developed a pattern of forging her name on written documents. *Petitioner's Documentary Evidence (Petr's Doc Evid.)* filed March 9, 2021. For Petitioner's other claim of financial hardship, there is no record that Petitioner offered evidence as support.

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 to prove that the collection of the debt may not be pursued due to operation of law. In a forgery case such as the instant case, this Court must determine whether the evidence presented by Petitioner would be deemed sufficient to meet the burden of proof required of Petitioner for a claim of forgery. "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). Relying on the guidance provided from the UCC, it is evident that the Secretary is not required to prove that the signature on the Note is valid until the Petitioner introduces evidence to otherwise support a finding that the signature in question is unauthorized or is forged. Official comment 1 to UCC § 3-308. Herein, Petitioner's signature is presumed to be authentic and authorized because there is no record to prove otherwise.

For the Petitioner to convince the Court otherwise, she must offer credible evidence that forgery occurred, for example an official police report of the alleged forgery, or an expert testimony based on a previous handwriting analysis of the signature in question that could have been relied upon to make a finding of forgery. Such proof is needed because, "[a]dministrative 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). Once the Petitioner presents sufficient and credible evidence that convinces the Court the allegation is otherwise true, then "the burden of proof for establishing the authenticity of the signature by a preponderance of the evidence shifts to the plaintiff," who

herein is the Secretary. See Justito Poblete, HUDBCA No. 98-A-SE-W302 (April 30, 2010). That has not occurred in this case.

HUD notified Petitioner of the existence of the subject debt in August 2020. To date, Petitioner has failed to offer any proof of a police report that might have indicated the seriousness of her claim of forgery. Moreover Petitioner did not take further steps (i.e. handwriting analysis expert testimony) towards establishing the credibility of her forgery claim, except of course to simply allege forgery. Such proof may have persuaded the Court that Petitioner raised a credible claim. However, raising the claim of forgery at this stage in the proceeding, particularly without any evidence as support, is both untimely and pointless. The Court has consistently maintained as precedent 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, the Court is now unable to establish the credibility of Petitioner’s claim of forgery so the Court must find Petitioner’s claim fails for lack of proof.

Next, Petitioner claims that the proposed wage garnishment creates for her a financial hardship. Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), Petitioner is required to show, by a preponderance of the evidence, that the proposed wage garnishment repayment schedule would create a financial hardship. In a case involving a claim of hardship, Petitioner “must submit ‘particularized evidence,’ including proofs of payment, showing that she will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation.” Ray J. Jones, HUDAJF 84-1-OA at 2 (March 27, 1985).

Herein, Petitioner failed to present any documentation as proof of the hardship that she claimed the proposed repayment plan would have on her should it be imposed. Again, Petitioner merely alleged hardship without evidence. Petitioner was ordered on January 7, 2021 and March 24, 2021 to produce the additional evidence necessary to demonstrate her financial state more sufficiently. Petitioner failed to do so. Because Petitioner failed to comply with the Court’s Orders, Petitioner’s claim of financial hardship likewise fails for lack of proof.

Should Petitioner’s financial circumstances persist, she may possibly request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

Based on the foregoing however, Petitioner remains contractually obligated to pay the subject debt.

The Order imposing the stay of referral of this matter issued on August 21, 2020 to the U.S. Department of the 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 of \$285.00 per month or an amount equal to 15% of Petitioner’s disposable income.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of Determination by Hearing Officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of this *Decision and Order*, and shall be granted only upon a showing of good cause.