

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

In the Matter of:

**Lilieth Garcia,**

Petitioner

21-VH-0067-AG-038

721016658

March 30, 2022

**DECISION AND ORDER**

On February 8, 2021, Petitioner filed a *Request for Hearing (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 February 9, 2021, 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 24, 2021, the Secretary filed his *Statement* along with documentation in support of his position. To date, other than the documentary evidence submitted with her Hearing Request, Petitioner has failed to file additional documentary evidence in support of her claim, and also has failed to comply with the orders issued by this Court to produce the same. 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.

Lilieth S. Garcia (“Petitioner”) executed and delivered to the Secretary a Partial Claim Promissory Note (“Note”) dated March 24, 2005, in the principal amount of \$3,952.05. *Secretary’s Statement (Sec’y. Stat.)*, ¶ 1, Ex. 1, *Note*. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner’s FHA insured first mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec’y. Stat.*, ¶ 2, Ex. 2, *Declaration of Larry Gagliardi, Jr.*, (*Gagliardi, Jr Decl.*),<sup>1</sup> ¶ 4.

By terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs (3)(A) [o]n 9/1/2033 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. *Sec’y. Stat.*, ¶ 3, Ex. 1, *Note*, ¶ 3; Ex. 2, *Gagliardi, Jr Decl.*, ¶ 4.

On or about September 27, 2019, the FHA Insurance on Petitioner’s primary mortgage was terminated, as the lender indicated that the mortgage was paid in full. *Sec’y. Stat.*, ¶ 4, Ex. 2, *Gagliardi, Jr. Decl.*, ¶ 4. HUD’s records indicate that the debt owed pursuant to the Note is enforceable and past due. *Sec’y. Stat.*, ¶ 4, Ex. 2, *Gagliardi, Jr. Decl.*, ¶¶ 3-5. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD.

A Notice dated January 14, 2021, was mailed to Petitioner at her last-known address. Exhibit 2, ¶ 6. Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$3,952.05 as the unpaid principal balance as of January 31, 2021;
- b. \$85.67 as the unpaid interest on the principal balance at 2.0% per annum through January 31, 2021;
- c. \$290.98 as the unpaid penalties and administrative costs as of January 31, 2021; and,
- d. interest on said principal balance from February 1, 2021, at 2.0% per annum until paid.

*Sec’y. Stat.*, ¶ 8, Ex. 2, *Gagliardi, Jr. Decl.*, ¶ 5.

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. However, to date, Petitioner has not entered into any such agreement. *Sec’y. Stat.*, ¶ 9, Ex. 2, *Gagliardi, Jr. Decl.*, ¶ 7-8.

Petitioner provided HUD with her income information as of January 31, 2021. Exhibit 2, ¶ 9. Based upon that information, the Secretary proposes a repayment schedule of \$238.19 bi-weekly, or an amount equal to 15% of Petitioner’s disposable income. *Id.* The Secretary requests

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<sup>1</sup> Larry Gagliardi, Jr. is the Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

a finding that the Petitioner's debt is past due and legally enforceable, and authorization of the proposed repayment schedule. *Id.*

### DISCUSSION

Petitioner claims she is not liable for the alleged debt because she paid of her mortgage with Wells Fargo. *Petitioner's Request for Hearing*. More specifically, Petitioner states, "I am enclosing the letter from Wells Fargo to HUD notifying them of my loan payoff as well as the letter from Wells Fargo to me confirming that my loan has been paid in full. Upon reaching out to Wells Fargo for additional information they have not been notified by HUD about any reversal to my pay off." Hearing Request at 1. As support, Petitioner introduced into evidence copies of a Loan Payoff Quote, Confirmation of Loan Payoff, an Order of Dismissal in Petitioner's administrative offset appeal, and copies of other miscellaneous communications via email between Petitioner and HUD's Financial Operations office.

For Petitioner not to be held liable for the full amount of the subject debt, there must either be 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 addition, this Court has maintained that "[i]f satisfaction of a senior deed of trust prevents a junior trust holder from enforcing a junior trust deed on the same real property, the junior trust holder may collect the debt, now unsecured, by initiating collection efforts based on the obligations in the loan note." Mitchell and Rosalva Fraijo, HUDBCA No. 99-C-CH-Y200 at 3 (March 20, 2000); John Bilotta, HUDBCA No. 99-A-CH-Y258 (December 29, 1999) (citing Kimberly S. (King) Thede, HUDBCA No. 89-4587-L74 (April 23, 1990)). After reviewing the record of evidence, there is no proof of Petitioner's release from the subject debt or Petitioner's full satisfaction of the subject debt that would otherwise render the subject debt unenforceable.

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 unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Without proof that Petitioner was released by HUD from her contractual obligation to pay this debt, the Court is unable to determine the credibility of Petitioner's claim. Therefore, the Court finds that Petitioner remains obligated to pay the subject debt.

Next Petitioner filed a copy of an Order of Dismissal issued in an administrative offset appeal previously before HUD OHA. Petitioner maintains that perhaps the matter now before the Court, which is an administrative wage garnishment proceeding, did in fact address already the satisfaction of the subject debt. This hearing is held to review the Secretary's decision to collect the alleged debt by means of administrative wage garnishment. It is not the forum within which to address collection of the alleged debt by means of administrative offset, and thus, the offset or levy of Petitioner's tax refund is not relevant to the outcome of this administrative wage garnishment hearing. *See* 31 C.F.R. § 285.11(f)(8)(ii).

As a final point, Rule 26.4(c) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*.


(Emphasis added).

Herein, while Petitioner submitted documentary evidence with the Hearing Request, such evidence was insufficient. The Court issued Orders for Petitioner to submit additional evidence to support her position more sufficiently, and to date, Petitioner has failed to comply. Accordingly, the Court finds that, pursuant to Rule 26.4(c), Petitioner's non-compliance with the Orders issued by this Court provides an additional basis for rendering a decision against Petitioner.

### **ORDER**

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount of \$ \$238.19 bi-weekly, or an amount that equals 15% of Petitioner's disposable pay.

SO ORDERED.  
  
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Vanessa L. Hall  
Administrative Judge

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**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.