

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

In the Matter of:

**Sabrina Cromratie,**

Petitioner

21-VH-0079-AG-043

7-21015353

May 6, 2022

**DECISION AND ORDER**

On March 10, 2021, Petitioner filed a *Request for Hearing (Hearing Request)* concerning a proposed administrative wage garnishment relating to the 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 a subject 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 March 17, 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 May 5, 2021, the Secretary filed his *Statement* along with documentation in support of his position. In response, on July 21, 2021, Petitioner filed a *Statement* along with documentary evidence in support of her 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.

Sabrina Cromratie (“Petitioner”) obtained a HUD-insured mortgage loan to purchase the subject property. *Secretary’s Statement (Sec’y. Stat.)*, ¶ 1, Ex. 1, *Declaration of Larry Gagliardi, Jr.*, (*Gagliardi, Jr Decl.*),<sup>1</sup> ¶ 4. Following Petitioner’s default under the HUD-insured mortgage, HUD approved a partial claim pursuant to the Home Affordable Modification Program (“HAMP”) in order to protect Petitioner from foreclosure and bring her delinquent mortgage arrears current. *Id.* In exchange for foreclosure relief, Petitioner executed a Subordinate Note (“Subordinate Note”) on May 14, 2014 in the amount of \$31,564.16 in favor of the Secretary and secured by a subordinate Deed of Trust. *Sec’y. Stat.*, ¶ 2, Ex. 2, *Note*; Ex. 3, *Deed*.

The Subordinate Note does not require periodic payments but mandates the full repayment of the principal balance upon the earlier of: (1) May 1, 2044; (2) payment in full of the primary, HUD-insured note; (3) the acceleration of the primary, HUD-insured note; (4) the termination of HUD insurance; or (5) the Petitioner’s ceasing to use the property securing the note as her primary residence. *Sec’y. Stat.*, ¶ 2, Ex. 2, *Note*, ¶ 4.)

Following the discharge of her primary note and the consequent termination of HUD’s insurance on the primary loan, Petitioner’s obligation to repay HUD under the Subordinate Note became due pursuant to the terms set forth in paragraphs 4(a)(i) and (iii) of the note. *Sec’y. Stat.*, ¶ 7, Ex. 1, *Gagliardi, Jr. Decl.* at ¶¶ 4, 6. Petitioner failed to make payment on the Subordinate Note in the amount specified above and a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated April 24, 2019 was sent to Petitioner. *Id.*

Petitioner entered a repayment agreement on September 30, 2019 to pay \$200 per month to HUD. Petitioner made 13 payments pursuant to the repayment plan totaling \$2,960.00 before defaulting. *Id.* A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings pursuant to Petitioner’s default under the payment plan dated February 10, 2021 (“Notice”) was sent to Petitioner, seeking the payment of her debt to the Federal government in the sum of \$40,387.24. *Sec’y. Stat.*, ¶ 7, Ex. 1, *Gagliardi, Jr. Decl.* at ¶7; Ex. 4.

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. *Sec’y. Stat.*, ¶ 12, Ex. 1, *Gagliardi, Jr. Decl.*, ¶8. Petitioner has not entered into a written repayment agreement in response to the Notice. *Id.* 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) \$ 28,411.37 as the unpaid principal balance as of April 30, 2021;

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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.

- (b) \$ 23.67 as the unpaid interest on the principal balance at 1.0% per annum through April 30, 2021;
- (c) \$ 0.00 as the unpaid penalties and administrative costs as of April 30, 2021; and
- (d) interest on said principal balance from May 1, 2021 at 1.0% per annum until paid.

*Sec 'y. Stat.*, ¶ 13, Ex. 1, *Gagliardi, Jr. Decl.*, ¶ 5.

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 the debtor HUD a fee for its collection efforts. 31 U.S.C. § 3711(g)(6). The collection fees, along with other required charges for the debtor’s interest, administrative costs, and penalties, are subsequently charged to the debtor. See 31 U.S.C. §§ 3717(a), (e)(1)-(2). Those fees total as much as 32% 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). *Sec 'y. Stat.*, ¶ 14. As a result, Petitioner owes \$40,450.16 as of April 15, 2021, which includes the subject debt plus additional fees incurred and penalties imposed. *Sec 'y. Stat.*, ¶ 15, Ex. 5.

HUD attempted to obtain Petitioner’s current pay stub. As of the date of this Declaration, Petitioner has not provided HUD with her current pay stub. The Secretary’s proposed repayment schedule is \$863.65 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner’s disposable pay the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner’s disposable pay. *Sec 'y. Stat.*, ¶ 26, Ex. 1, *Gagliardi, Jr. Decl.*, ¶ 9.

The Secretary respectfully requests that the Court find Petitioner’s debt past due and legally enforceable and the Secretary’s proposed repayment schedule fair.

### **DISCUSSION**

Petitioner does not deny that the subject debt is owed, rather she disputes the amount of the debt so claimed by the Secretary. Petitioner contends in her *Hearing Request* that: (1) acceleration of due date for the subject debt, without notice, was a breach of contract; (2) the actual amount owed is \$29,292.72 because Petitioner “can also show that she has sent additional payments to HUD since then that were accepted, and the monies debited from her account;” and, (3) the repayment plan now proposed by the Secretary would create a financial hardship. Along with her *Reply*, Petitioner offered as evidence copies of the Notice of Intent for Administrative Wage Garnishment, communications between Petitioner and HUD’s Financial Operations Office, and case reports and loan documentation related to the subject debt.

Addressing the issue of payment due upon acceleration, Petitioner argues that without notice, “HUD unnecessarily accelerated the debt without exploring any alternatives or allowing my client to explain her situation.” Failure to provide sure notice was, according to Petitioner, “a

breach of the terms of the Deed of Trust” because had she “received proper notice, there could have been a discussion of the above-mentioned events and acceleration could have been avoided.” The debt in dispute is not subject to the terms of the deed of trust as alleged by Petitioner but instead is subject to the terms of the Subordinate Note.

In the Subordinate Note, HUD agreed to provide foreclosure relief for Petitioner in the amount of \$31,564.16 in favor of the Secretary. The debt was secured by a Deed of Trust, to which HUD was not a party. While the Note was secured by the Deed of Trust, the terms of the deed of trust do not dictate the obligations of the parties to the Subordinate Note. The Subordinate Note provides that full repayment of the principal balance should be made “upon the earlier of: (1) May 1, 2044; (2) payment in full of the primary, HUD-insured note; (3) the acceleration of the primary, HUD-insured note; (4) the termination of HUD insurance; or (5) the Petitioner’s ceasing to use the property securing the note as her primary residence.” According to Petitioner’s *Hearing Request*, the primary HUD-insured note was paid in full when Petitioner’s home was destroyed and declared a total loss by the insurance company. Insurance coverage for the house was also later terminated by the insurance company.

The Secretary’s right to collect the subject debt in this case emanates from the terms of the Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). The purpose of the Subordinate Note, in its function as a Security Instrument, is to protect HUD from losses which might result if the Borrower defaults under the Note. In this case, Petitioner’s issue is more between her and her insurance company that, according to the record, only partially retired a portion of Petitioner’s debt. The record does not reflect evidence of any written release of the subject debt from HUD, or any consideration exchanged, that would otherwise prove Petitioner is no longer obligated to pay the subject debt. When Petitioner paid in full the primary mortgage, despite what may have triggered full payment of the same, the amount of the subject debt immediately became due based on the agreement between Petitioner and HUD as presented in the Note.

As a resolution for acceleration of the debt, Petitioner states that she intends to return to the property and, on return, wishes to “discuss rescheduling and deaccelerating the debt, allowing her to make payments that she can afford, as she is temporarily living in an apartment until the home can be repaired or replaced.” Petitioner also requests that “...this situation be rectified by reinstating the loan,” removing the debt from her credit report, and receiving credit “for the payments she has already made.” This Court adjudicates contested cases where the Secretary seeks to collect a subject debt by means of administrative wage garnishment and where Petitioner must show by a preponderance of the evidence that no debt exists, that the amount of the debt is incorrect, or that the proposed repayment schedule, would cause undue financial hardship to Petitioner. 31 C.F.R. § 285.11(f) (8) (ii), as authorized by 24 C.F.R. § 17.81. Petitioner’s request of the Court to reschedule and deaccelerate the subject debt now goes beyond the scope of this Court’s jurisdiction. The regulations referenced in Petitioner’s response do not apply to the circumstances of this case. In this case, the acceleration provision in the Note signed by the parties is what controls, so collection of the subject debt is now due and is Petitioner’s responsibility to pay in full.

Next, Petitioner challenges the amount of the debt alleged by the Secretary at \$40,387.24 by stating, “the actual amount owed is \$29,292.72 because Petitioner “can also show that she has sent additional payments to HUD since then that were accepted, and the monies

debited from her account.” The Secretary, in response, states that “Petitioner’s contention that she does not owe the full \$40,387.24 demanded in the February 10, 2021 letter appears to be based on her reading of the Case Reconstruction Report sent to her. That report reflects only her debt to HUD, whereas the remainder of her federal indebtedness arises from the fees, costs, and penalties incurred by Treasury as a consequence of HUD’s referral of the debt to that agency.” The record supports the Secretary’s position.

In general, HUD is required by statute and regulation to charge interest and fees on past due debts. 1900.25 REV-5 § 2-5 (B). The Debt Collection Improvement Act of 1996 requires HUD to refer delinquent debts to the U.S. Department of the Treasury (“Treasury”) for collection. 31 U.S.C. § 3711(g). When 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). Such fees are then incurred by the debtor as the debtor’s responsibility until such time as the debt is paid in full. Moreover, HUD is required to charge the debtor interest, administrative costs, and penalties. 31 U.S.C. § 3717(a) & (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 to interest, and then finally to the principal. 31 C.F.R. § 901.9(f). As with all debts due to be collected when referred to Treasury, fees and administrative as a result are also passed on to the debtor, herein Petitioner.

Finally, Petitioner raises a claim of financial hardship in response to the proposed repayment schedule for the subject debt. 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 financial hardship, Petitioner “must submit ‘particularized evidence,’ including proofs of payment, showing that he 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). There is no record of evidence in support of Petitioner’s claim of financial hardship.

In the absence of documentary evidence that supports Petitioner’s monthly income and expenses, her claim of financial hardship lacks credibility. As a result, the Court is unable to make this determination. 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)). Therefore, the Court finds that Petitioner’s claim of financial hardship fails for lack of sufficient proof, and further finds that Petitioner remains contractually obligated to pay the subject debt.

### **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 that equals 15% of Petitioner’s disposable pay.

SO ORDERED.



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.