

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

In the Matter of:

Robin L. Jasper,

Petitioner

21-VH-0112-AG-069

52-0883319MQ

June 24, 2022

DECISION AND ORDER

On March 31, 2021, Robin L. Jasper (“Petitioner”) filed a 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 April 2, 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 14, 2021, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file sufficient documentary evidence in support of her claim or in compliance with the Orders issued by this Court. 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.

On April 13, 1993, Petitioner, Robin Jasper, executed and delivered a Retail Installment Contract (“Note”) to Sam’s Mobile Home Sales, Inc., in the amount of \$17,834.00, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). *Secretary’s Statement (“Sec’y. Stat.”)* ¶ 4, filed May 14, 2021, Ex. A, Note. Contemporaneously, the Note was assigned to Logan Laws Financial Corporation “Logan Laws.” *Id.* at ¶¶ 1, 2.

Logan Laws was defaulted as an issuer of Mortgage-Backed Securities (“MBS”) due to its failure to comply with the Government National Mortgage Association’s (“GNMA’s”) MBS program requirements. *Sec’y. Stat.*, ¶ 4, Ex. B, *Declaration of Rene Mondonedo (Mondonedo’s Declaration)* at ¶ 4. Upon default by Logan Laws, all of its rights, title, and interest in Petitioner’s loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Logan Laws and GNMA. *Id.* at 5. As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. *Sec’y. Stat.*, ¶ 5, Ex. B, *Mondonedo’s Declaration*, at ¶ 4.

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) \$13,877.45 as the unpaid principal balance;
- (b) \$6,386.67 as the unpaid interest on the principal balance through April 6, 2021;
- (c) \$808.46 in administrative fees;
- (d) \$6,059.31 in Assessed Penalty Fee; and
- (e) 2% interest on said principal balance until paid.

Sec’y. Stat., ¶ 7, Ex. B, *Mondonedo’s Declaration*, at ¶ 6.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated March 1, 2021, was sent to Petitioner. *Sec’y. Stat.*, ¶ 7, Ex. B, *Mondonedo’s Declaration*, at ¶ 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 under mutually agreeable terms. To date, Petitioner has not entered into a written repayment agreement. *Sec’y. Stat.*, ¶ 8, Ex. B, *Mondonedo’s Declaration*, at ¶ 7. Petitioner has not presented

any proof of financial hardship; therefore, GNMA proposes a garnishment amount of 15% of Petitioner's disposable pay. *Sec'y. Stat.*, ¶ 16.

Based on the foregoing, the Secretary respectfully requests that the Court find Petitioner's debt past due and legally enforceable, and the Secretary's proposed repayment schedule fair. *Id.*

DISCUSSION

Petitioner maintains that she does not owe the subject debt because the debt was paid in full. Petitioner claims that, "I feel I do not owe this debt. The 1993 mobile home was paid in full in 2004." *Petitioner's Hearing Request (Hrg. Req.)*, filed March 31, 2021. As support, Petitioner provided a copy of a certificate of title that she offered as proof that the subject debt was paid in full.

For Petitioner not to be held liable for the full amount of the subject debt, a mere copy of a certificate of title is insufficient as proof that the subject debt was paid in full. 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). Petitioner has failed to produce sufficient evidence of a written release from HUD that discharges Petitioner for the debt associated with the Note. She also has failed to prove that valuable consideration was offered in satisfaction of the subject debt, sufficient enough to render the subject debt unenforceable.

In addition, case law precedent has established 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)). Herein, the Note is considered a separate and distinct debt from the primary mortgage. See Catherine Coley, HUDOA No. 16-VH-0147-AG-039 at 3 (July 24, 2017).

This Note clearly states that a default on the Note consists of certain events or conditions that trigger a secured party's right to cure the default, one of which is the borrower's default on payment of any installment of the total number of installments due on the Note. *Sec'y. Stat.*, Ex. A ¶ 4(a). In this case, upon the occurrence of Petitioner's non-payment, the Note became immediately due and payable in full. *Sec'y. Stat.*, Ex. A ¶ 5. Without evidence from Petitioner to prove otherwise, Petitioner's contractual obligation to pay the Note remains intact. Therefore the Court finds that this claim fails for lack of proof.

Next, Petitioner contends that she has been out of work for an extended period. She states that, "I have been out of work since July 2020 due to back surgery. I have no income coming in at this time." *Hearing Request* at 1. To date, Petitioner has failed to provide proof of unemployment, proof of a medical diagnosis or costs incurred for treatment, or proof of financial hardship, despite the Court issuing an Order for her to produce evidence of the same in support of her position. See Order for Clarification dated April 21, 2022. Even in response to the Order of April 2022, Petitioner offered again what she thought to be sufficient proof of full payment of the subject debt

– a copy of the Certificate of Title she previously submitted with her *Hearing Request*. See Petitioner’s Documentary Evidence filed September 2, 2021. A Certificate of Title is insufficient as proof of payment for the debt herein. Therefore, the Court must again find that this claim also fails for lack of sufficient proof.

Petitioner has failed to meet her burden of proof and, as a result, the Court is unable to determine the credibility of Petitioner’s position without evidence to refute or otherwise rebut what has been presented by the Secretary.

ORDER

Based on the foregoing, the Order issued on April 2, 2021 that imposed the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is hereby **VACATED**.

The Secretary is authorized to seek 15% of Petitioner’s disposable pay in satisfaction of the debt due and now enforceable.

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 the written decision, and shall be granted only upon a showing of good cause.