

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

In the Matter of:

Janice Douglas,

Petitioner

21-VH-0152-AG-082

5518952 LL 9244

June 24, 2022

DECISION AND ORDER

On May 17, 2021, Janice Douglas, (“Petitioner”) filed a *Request for Hearing* (“Hearing Req.”) 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 May 19, 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 July 19, 2021, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file any 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 action is brought on behalf of the Secretary of the United States Department of Housing and Urban Development (“Secretary” or “HUD”) pursuant to 31 U.S.C. § 3720D.

On October 30, 1992, Petitioner “executed and delivered Retail Installment Contract (“Contract”) in the amount of \$74,375.20 to E.J. Womack Enterprises [sic] dba Country Fair Homes.” The Contract was then assigned to Logan-Laws Financial Corporation (“Logan-Laws”) 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 July 19, 2021, Ex. A, Note. 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 (“Ginnie Mae”) 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 Ginnie Mae by virtue of the Guarantee Agreement entered into between Ginnie Mae and First Beneficial. *Id.* As Ginnie Mae (a division of HUD) is the rightful holder of the Contract, 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 Contract. 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) \$15,958.34 as the unpaid principal balance;
- (b) \$3,096.25 in Assessed Penalty Fee;
- (c) \$29,343.89 as the unpaid interest on the principal balance through May 25, 2021;
- (d) \$0 in administrative fees; 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 Wage Garnishment Proceedings (“Notice”) dated March 17, 2021 was sent to Petitioner. *Sec’y. Stat.*, ¶ 8, Ex. B, *Mondonedo’s Declaration*, at ¶ 7. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under mutually agreeable terms. Petitioner failed to enter into a written repayment agreement in response to the Notice. *Id.*

Ginnie Mae's proposed repayment schedule is 15% of Petitioner's disposable pay. *Sec'y. Stat.*, ¶ 10, Ex. B, *Mondonedo's Declaration*, at ¶ 8. 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 disputes the existence and the amount of the debt. However, beyond Petitioner's allegations that the debt is non-existent or that the amount is incorrect, the record lacks evidence in support of Petitioner's position.

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. 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). In order for Petitioner to meet her burden of proof that the debt does not exist, she must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03A-CH-AWG09 (January 30, 2003)); William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999); Valerie L. Karpanaj, HUDBCA No. 87-2518-H51 (January 27, 1988); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986).

In this case, Petitioner has failed to present proof of a written release from HUD that discharges her from the debt associated with the Note, or evidence of valuable consideration paid to HUD in satisfaction of the subject debt. Similarly, Petitioner has also failed to produce evidence that the amount of the debt as challenged is in fact erroneous.

Case law precedent has established 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)). This Court is unable to determine the credibility of Petitioner's claims in the absence of evidence to refute what has been presented by the Secretary. Because Petitioner has failed to meet her burden of proof, the Court finds that Petitioner's claim fails for lack of proof.

As a final point, Rule 26.4 (d) 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).

Accordingly, pursuant to Rule 26.4(d), Petitioner's non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

ORDER

Based on the foregoing, the subject debt does exist, and Petitioner remains contractually obligated to pay the amount so claimed by the Secretary.

The Order issued on May 19, 2021 imposing the stay of referral of this matter to the U.S. Department of 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 in an amount equal to 15% Petitioner's monthly disposable pay.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of the 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.