

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

In the Matter of:

**Mireya Alvarez Hernandez**

Petitioner

21-VH-0211-AG-120

721011591

July 29, 2022

**DECISION AND ORDER**

On July 22, 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 July 29, 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 August 18, 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, and also has failed to respond to 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 or about January 4, 2013, Mireya Alvarez Hernandez ("Petitioner") executed a Subordinate Note ("Note") in the amount of \$ 30,921.02. The Note secured a Subordinate Mortgage held by the Secretary. *Secretary's Statement (Sec'y. Stat.)*, ¶ 12 Ex. A, *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 Gary Sautter (Sautter Decl.)*,<sup>1</sup> ¶ 4. The Note cited specific events making the debt become due and payable, including when all amounts due under the primary note and related mortgage are paid in full, and when the Note is no longer insured by HUD. *Sec'y. Stat.*, ¶ 3, Ex. A, *Note*, ¶ 4(A)(i) & (iii).

On or about November 30, 2015, the Petitioner's first mortgage was paid in full, and the FHA mortgage insurance was terminated. *Sec'y. Stat.*, ¶ 4, Ex. B, *Sautter Decl.*, ¶ 4. 5. Upon the full payment of the primary note, the subordinate note became due and payable. Petitioner defaulted and Petitioner's debt to HUD is delinquent.

HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.*, ¶ 4, Ex. B, *Sautter Decl.*, ¶¶ 4-5.

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

- a. \$ 20,427.61 as the unpaid principal balance as of July 31, 2021;
- b. \$17.02 as the unpaid interest on the principal balance at 1.0% per annum through July 31, 2021;
- c. 1% interest on said principal balance from August 1, 2021 until paid.

*Sec'y. Stat.*, ¶ 8, Ex. B, *Sautter Decl.*, ¶ 5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated June 2, 2021, was mailed to Petitioner at his last-known address. *Sec'y. Stat.*, ¶ 9, Ex. B, *Sautter Decl.*, ¶ 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.*, ¶ 10, Ex. B, *Sautter Decl.*, ¶ 7-8.

Therefore, the Secretary proposes a repayment schedule of \$567.91 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collections

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<sup>1</sup> Gary Sautter is the Director of the Asset Recovery Division of HUD's Financial Operations Center.

Standards; or 15% of Petitioner's disposable income. *Id.*

## DISCUSSION

Petitioner does not dispute the amount of the debt. Instead, Petitioner challenges the existence of the debt because Petitioner alleges the subject debt is the responsibility of Petitioner's former spouse pursuant to the terms of a divorce decree. There is no record of evidence presented by Petitioner to otherwise support Petitioner's claim of not being responsible for the subject debt.

The Court has determined that the record lacks evidence to render the subject debt unenforceable against Petitioner and thus Petitioner has failed to meet the necessary burden of proof. For Petitioner not to be held liable for the full amount of the debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation to HUD, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). There is neither evidence of written release nor evidence of valuable consideration in the record.

Based on case law precedent, the debtor, herein Petitioner, is jointly and severally liable with the former spouse for repayment of the debt according to the terms of the *Note*. As a result, the Secretary may proceed against any co-signer, either Petitioner or her spouse in this case, for the full amount of the debt. Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003). The *Divorce Decree* relied upon only determines the rights and liabilities between Petitioner and her former spouse, not the rights and liabilities between Petitioner and third parties such as HUD. Kimberly S. Kim. (Thiedel), HUDBCA No. 89-4587-L74 (April 23, 1990). Any reference to a document (i.e. *Divorce Decree*) purporting to release a debtor from a joint obligation does not affect the claims of an existing third-party creditor against that debtor unless the creditor was a party to the action. Janet T. Rodocker, HUDBCA No. 00-A-CH-AA17 (May 22, 2000).

While Petitioner may be divorced from the former spouse, neither the Secretary nor the lender was a party to that divorce proceeding and thus the terms of any *Divorce Decree* issued have no impact on the enforceability of the subject debt. As a recourse, Petitioner may consider seeking, in a state or local court, enforcement of the *Divorce Decree* that was granted to Petitioner and the former spouse so that Petitioner may recover from the former spouse monies paid to HUD in satisfaction of the subject debt. See William Holland, HUDBCA No. 00-A-NY-AA83, dated Oct. 12, 2000; Michael York, HUDBCA No. 09-1-1-CH-AWG36 dated June 26, 2009, at 3. That course of action obviously would be a separate and distinct proceeding from this one and is within Petitioner's sole discretion to pursue. But in this case, without additional proof to substantiate Petitioner's receipt of a written release directly from HUD, Petitioner shall remain contractually obligated to pay the subject debt as a co-signor on the *Note*.

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).

Accordingly, the Court finds that, pursuant to Rule 26.4(c), 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 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 is 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.