

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

In the Matter of:

Joseph Reyes,

Petitioner

21-VH-0226-AG-130

721017602

January 25, 2023

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hearing Request*”) filed on August 12, 2021, by Petitioner Joseph Reyes (“Petitioner”) concerning the existence and enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishments as a mechanism for the collection of debts allegedly 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

On August 12, 2021, Petitioner filed documentary evidence to supplement his position set forth in his *Hearing Request*. Pursuant to 31 C.F.R. § 285.11(f)(4), on August 19, 2021, this Court stayed the issuance of an administrative wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”) at 2. Thereafter, on October 19, 2021, the Secretary filed a *Secretary's Statement* (“*Sec’y Stat.*”), along with documentary evidence, in support of her position. 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, as a result of a defaulted loan that was insured against non-payment by the Secretary.

On or about August 11, 2008, Joseph Reyes (“Petitioner”) and Olivia Magallan executed and delivered to the Secretary a Partial Claim Promissory Note (“Note”) with an Effective Date of August 6, 2008, in the principal amount of \$6,627.27. *Secretary’s Statement (Sec’y Stat.)* ¶ 2; Ex. 1, Note ¶ 2. 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.* ¶ 3, Ex. 2, *Declaration of Gary Sautter*¹ (“*Sautter Decl.*”) ¶ 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 3/1/2029 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 purchaser as his or her principal residence does not occupy the property. *Sec’y. Stat.*, ¶ 4. Ex. 1, ¶ 3; Ex. 2, *Sautter Decl.*

On or about February 13, 2020, the FHA Insurance on Petitioner’s primary mortgage was terminated, as the lender indicated that the mortgage was paid in full. *Sec’y. Stat.* ¶ 5, Ex. 2, *Sautter Decl.* ¶ 4. HUD’s records indicate that the debt owed pursuant to the Note is enforceable and past due. Exhibit 2, ¶¶ 3-6. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. Petitioner has failed to make payment on the Note and thus is delinquent. *Sec’y. Stat.* ¶ 6, Ex. 2, *Sautter Decl.* ¶ 5.

Therefore, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$ 6627.27 as the unpaid principal balance as of September 30, 2021;
- (b) \$ 44.16 as the unpaid interest on the principal balance at 1% per annum through September 30, 2021;
- (c) \$ 306.22 as the unpaid penalties and administrative costs as of September 30, 2021;
- (d) Interest on said principal balance from October 1, 2021, at 1% per annum until paid.

Sec’y. Stat., ¶ 7, *Sautter Decl.*, ¶ 5.

¹ Gary Sautter is the Acting Director of Asset Recovery Division for the U.S. Housing and Urban Development.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated June 15, 2021 ("Notice") was sent to Petitioner. *Sec 'y. Stat.*, ¶ 7, *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. However, to date, Petitioner has not entered into any such agreement. *Sec 'y. Stat.*, ¶ 9, *Sautter Decl.*, ¶ 7.

Based upon the issuance of an Administrative Wage Garnishment Order, Petitioner's wages were garnished on August 25, 2021 in the amount of \$188.53. Accordingly, the Secretary proposes a wage garnishment repayment schedule in the amount of \$188.53 per month, or an amount equal to 15% of Petitioner's disposable income. *Sec 'y. Stat.*, ¶ 11, *Sautter Decl.*, ¶ 9.

DISCUSSION

Petitioner claims that the subject debt does not exist because it was paid in full when he received a lien release on the primary mortgage with Wells Fargo. *Petitioner's Request for Hearing*. As support, Petitioner offered into evidence copies of a Release of Lien and a letter from Wells Fargo acknowledging the Lien Release. *Id.*, Attachments. However, the Release of Lien only reflected satisfaction of the debt Petitioner owed to the primary lender, Wells Fargo. *Id.*

For Petitioner not to be held responsible for the full amount of the subject debt, there must be either a release in writing from the former lender explicitly releasing Petitioner from an obligation to pay the subject debt, or proof of "valuable consideration accepted by the lender (herein HUD)" that indicates HUD's intent to release. *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Petitioner has not provided any evidence beyond the Release of Lien related to the primary mortgage that HUD released Petitioner from the debt owed in this case. Instead, Petitioner's evidence merely demonstrates full payment of the primary mortgage and thus strengthens the Secretary's allegations that the subject remains delinquent.

The Court is not convinced that Petitioner has met his burden of proof. The Secretary's right to collect the subject debt emanates from the terms of the Note, not from the terms of a lien release associated with the primary mortgage. *See Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). As a result, while Petitioner's evidence offers proof that the primary mortgage to Wells Fargo was fully satisfied, there is no indication from the record that the subject debt owed to HUD was also satisfied.

This Court has consistently maintained that "assertions without evidence are insufficient to show that a debt claimed by the Secretary is not past due and legally enforceable." *Sara Hedden*, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), quoting *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). So in this case, Petitioner's failure to offer sufficient evidence to prove

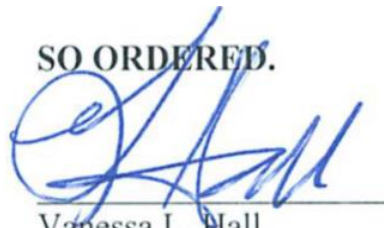
that the subject debt does not exist instead further proves that the subject debt is enforceable against Petitioner. Therefore, the Court must find that Petitioner's claim fails for lack of proof.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury on August 19, 2021 for an 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 the amount of \$188.53 per month, or an amount equal to 15% of Petitioner's disposable income.

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.