

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

In the Matter of:

Dian and Vincent Ellis,

Petitioners

22-VH-0037-AG-033

721018149

April 13, 2023

DECISION AND ORDER

On November 19, 2021, Petitioners filed a *Hearing Request* along with documentary evidence 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.

Applicable Law

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(1) (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(1) (4), on November 19, 2021, the Court stayed referral of the debt to the U.S. Department of the Treasury until the issuance of this written decision. *Notice of Docketing, Order and Stay of Referral ("Notice of Docketing")*. On January 18, 2022, the Secretary filed her *Statement* along with documentation in support of her position. Also on January 18, 2022 in response to the Court's *Order*, Petitioners filed additional documentary evidence in support of their 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, because of a defaulted loan that was insured against non-payment by the Secretary.

Vincent Ferrer Ellis and Dian Oktaria Ellis (“Petitioners”) executed and delivered to the Secretary a Promissory Note (“Note”), dated May 18, 2016, in the principal amount of \$76,847.66. *Sec’y. Stat.* ¶ 2, Ex. 1, Note; Ex. 2, *Declaration of Brian Dillon*¹ (“*Dillon Decl.*”) ¶ 4. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner’s FHA-insured primary mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec’y. Stat.* ¶ 3, Ex. 1, Note; Ex. 2, *Dillon Decl.* ¶ 4.

By terms of the Subordinate Note, the amount to be repaid thereunder becomes due and payable “[o]n July 1, 2046 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 note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary.” *Sec’y. Stat.* ¶ 4, Ex. 1, Note, ¶ 4(A).

On or about June 12, 2020, the FHA Insurance on Petitioners’ primary mortgage was terminated, as the lender indicated that the mortgage was paid in full. *Sec’y. Stat.* ¶ 5, Ex. 1, Note, ¶ 4; Ex. 2, *Dillon Decl.* ¶ 4. Accordingly, HUD has attempted to collect the amounts due under the Note, but Petitioner remains indebted to HUD. *Sec’y. Stat.* ¶ 5, Ex. 2, *Dillon Decl.* ¶¶ 5-6.

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 Petitioners remain indebted to HUD. *Sec’y. Stat.* ¶ 6, Ex. 2, *Dillon Decl.* ¶ 6. Notices of Intent to Initiate Administrative Wage Garnishment Proceedings, dated October 20, 2021, were mailed to Petitioners at their last-known address. *Id.*

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

- a. \$76,847.66 as the unpaid principal balance as of November 30, 2021;
- b. \$384.06 as the unpaid interest on the principal balance at 1.0% per annum through November 30, 2021;
- c. \$4,678.50 as the unpaid penalties and administrative costs through November 30, 2021; and
- d. interest on said principal balance from December 1, 2021, at 1.0% per annum until paid.

Sec’y. Stat. ¶ 8, Ex. 2, *Dillon Decl.* ¶ 6.

In accordance with 31 C.F.R. 285.11(e)(2)(ii), Petitioner were afforded the opportunity to enter into a written repayment agreement with HUD. However, to date, Petitioners have not entered into any such agreement. *Sec’y. Stat.* ¶ 7, Ex. 2, *Dillon Decl.* ¶ 7.

¹ Brian Dillon is the Director of Asset Recovery Division for the U.S. Housing and Urban Development.

HUD's efforts to obtain current pay information from Mr. Vincent Ellis were unsuccessful. Accordingly, the Secretary proposes a repayment schedule of \$2,300.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards. Alternatively, should income information become available, the Secretary proposes a repayment schedule equal to 15% of Mr. Vincent Ellis's disposable income. Mrs. Dian Ellis has reported to HUD that she is a homemaker, and HUD has not been able to determine that she is employed outside the home. Accordingly, although HUD asserts that Mrs. Ellis is liable for the debt, HUD is not pursuing administrative wage garnishment against her at this time. Further, HUD reserves the right to again seek collection of the debt from Mrs. Dian Ellis by means of administrative wage garnishment in the future. *Sec'y. Stat.* ¶11-12, Ex. 2, *Dillon Decl.* ¶9-11.

DISCUSSION

Petitioners contend that they are not responsible for the subject debt because the debt was paid in full at settlement. *Petitioner's Hearing Request*, at 1. As support, Petitioners introduced into evidence copies of email communications between Petitioners and Nationstar and HUD, as well as records of monthly payments Petitioners made on the primary mortgage, in support of their position. *Petitioner's Documentary Evidence*, Attachments.

For Petitioners not to be held liable for the full amount of the subject debt, there must be either a release in writing from HUD explicitly relieving Petitioner's obligation, or "valuable consideration accepted by HUD" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). After reviewing the record, the Court has determined that Petitioners have failed to meet their burden of proof because Petitioners have not offered any proof that HUD explicitly released Petitioners from their contractual obligations. The Secretary's right to collect the alleged debt stems from the terms of the Note, not from the terms of payoff statements or settlement statements from the primary lender. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). As a result, the Court has determined that the evidence presented by Petitioners did not serve as credible or sufficient proof that the subject debt is unenforceable and not past due.

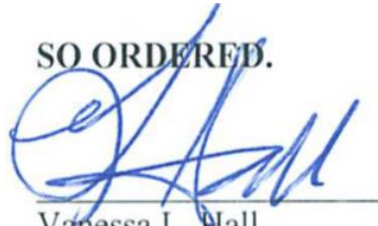
This Court has consistently maintained that "assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due and unenforceable." Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, in the absence of sufficient evidence, the Court must find that Petitioners have failed to meet their burden of proof and thus remain contractually obligated to pay the subject debt so claimed by the Secretary.

ORDER

Based on the foregoing, the Order imposing the stay of referral on November 19, 2021 of this matter to the U.S. Department of Treasury 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 at an amount equal to 15% of Petitioners' 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.