

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

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In the Matter of:	)	
	)	Judge Vanessa L. Hall
	)	
<b>Brandy Smith</b>	)	HUDOHA No. 22-VH-0052-AG-039
	)	
Petitioner.	)	Claim No. 721018105
	)	April 6, 2023

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**DECISION AND ORDER**

On December 6, 2021, Brandy Smith (“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 December 6, 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 January 28, 2022, the Secretary filed her *Statement* along with documentation in support of her position. Petitioner submitted the documentary evidence in support of her claim along with her *Hearing Request* which was filed on December 6, 2021. 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.

In or about January 2008 and again in March 2017, the HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Secretary's Statement* ("Sec'y. Stat.") ¶ 2, filed January 28, 2022, Ex. B and C, Notes. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Sec'y. Stat.*, ¶ 3, Ex. A, *Declaration of Brian Dillon (Dillon's Declaration)*<sup>1</sup> at ¶ 4.

In exchange for foreclosure relief, on January 30, 2008 and again on March 23, 2017, Petitioner executed a Subordinate Note ("Notes") in the amount of \$4,450.72 and \$16,647.00, in favor of the Secretary. *Sec'y. Stat.*, ¶ 3, Exhibits B (2008 Note) and C (2017 Note). Paragraph 4 of the Notes cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. *Sec'y. Stat.*, ¶3, Exhibits B (2008 Note) at ¶ 4(A)(i) and C (2017 Note) at ¶ 4(I)(1)). On or about July 29, 2020, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec'y. Stat.*, ¶3, *Dillon Decl.* at ¶ 6; Exhibits B (2008 Note) at ¶ 4(A)(i) & iii, and C (2017 Note) at ¶ 4(I)(1) & (2)).

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the January 30, 2008 Note at the "U.S. Department of HUD c/o First Madison Services, Inc., 4111 S. Darlington, Suite 300, Tulsa, Oklahoma 74135 or any such other place as Lender may designate in writing by notice to Borrower" and on the March 23, 2017 Note at the "Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 or any such other place as Lender may designate in writing by notice to Borrower." *Sec'y. Stat.*, ¶ 7, Exhibits B (2008 Note) at ¶ 4(B), and C (2017 Note) at ¶ 4(I) PLACE).

Petitioner is currently in default on the Note. The Secretary has made efforts to collect from Petitioner but has been unsuccessful. *Sec'y. Stat.*, ¶ 8, *Dillon Decl.* at ¶ 5. Petitioner is justly indebted to the Secretary in the following amounts as of December 31, 2021:

- (a) \$21,097.72 as the unpaid principal balance;
- (b) \$122.99 as the unpaid interest on the principal balance through December 31, 2021;
- (c) \$1,322.36 in administrative fees;
- (d) 2% interest on said principal balance from January 1, 2022 until paid.

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

*Sec'y. Stat.* at ¶ 9, Ex. A, *Dillon's Declaration* at ¶ 5.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Wage Garnishment Proceedings (“Notice”) dated October 20, 2021 was sent to Petitioner. *Sec'y. Stat.*, ¶ 8, Ex. A, *Dillon'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. *Id.* Petitioner failed to enter into a written repayment agreement in response to the Notice. *Sec'y. Stat.*, ¶ 11, Ex. B, *Dillon's Declaration*, at ¶ 7.

HUD reviewed Petitioner's biweekly pay statement for the period ending January 8, 2022. The pay statement reveals that Petitioner's biweekly gross salary is \$1,624.50. Less allowable deductions of \$166.02, Petitioner's biweekly net disposable pay equals \$1,458.48. Administrative Wage Garnishment of 15% of Petitioner's disposable pay equals \$218.77 biweekly. Therefore, the Secretary's proposed repayment schedule is \$218.77 biweekly, or 15% of Petitioner's disposable pay. *Sec'y. Stat.*, ¶ 17, Ex. B, *Dillon's Declaration*, at ¶ 8.

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

### **DISCUSSION**

Petitioner contends, in her *Hearing Request*, that the subject debt does not exist. Even though Petitioner offers documentary evidence that sufficiently supports satisfaction of the primary mortgage, the record lacks evidence that otherwise proves full satisfaction of the subject debt or proves that the subject debt no longer exists. *See Hearing Request*, Attachments. As a result, the Court is unable to assess the credibility of Petitioner's position based on the evidence presented.

But, the Court has determined the Secretary's position to be credible and persuasive. 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)). The Notes in this case are considered separate and distinct debts from the primary mortgage. As a result they would be considered junior trust deeds that should be enforced. *See Catherine Coley*, HUDOA No. 16-VH-0147-AG-039 at 3 (July 24, 2017).

The Notes state in unambiguous terms that certain events or conditions can trigger a secured party's right to cure a default, one of which is the borrower's default on payment of any installment of the total number of installments due on the Notes. *Sec'y. Stat.*, Ex. B ¶ 4(a). When Petitioner failed to pay the Notes as agreed, the full amount of the Notes immediately became due and payable. *Sec'y. Stat.*, Ex. B ¶ 5. Petitioner's non-payment of the same would be considered a

default. Petitioner has failed to produce evidence of a written release from HUD that released Petitioner from her obligations under the Notes or proves that the subject debt is non-existent. Without such evidence, the subject debt remains in default and Petitioner's contractual obligation remains intact. So accordingly, the Court finds that the subject debt not only exists but is past due and enforceable against Petitioner.

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).

Therefore, 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 Order issued on December 6, 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

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