

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

In the Matter of:

**Lavina Begay,**

Petitioner

22-VH-0121-AG-085

721018590

November 6, 2023

**DECISION AND ORDER**

This proceeding is before the Court upon a *Request for Hearing (Hearing Request)*, filed on February 23, 2022 by Lavina Begay (“Petitioner”), concerning the existence, amount, or enforceability of the payment schedule of the debt allegedly owed to the United States 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 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 bears 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 March 23, 2022, this Court stayed the issuance of a wage garnishment order and ordered HUD to suspend any existing withholding order until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral (Notice of Docketing)* at 2. On May 23, 2022, the Secretary filed his *Statement (Sec’y Stat.)* along with documentation in support of her position. Petitioner filed, on July 26, 2022, documentary evidence in support of her position. This case is now ripe for review.

## FINDINGS OF FACTS

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.

The Secretary contends in her *Statement* that “on or about November 23, 2015, Lavina Begay (“Petitioner”) executed and delivered to the Secretary a Promissory Note (“Note”) dated November 20, 2015, in the principal amount of \$55,606.91.” 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.

By terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs (4)(A)[o]n 12/1/2045 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 property is not occupied by the purchaser as his or her principal residence.

On or about May 1, 2020, the FHA Insurance on Petitioner’s primary mortgage was terminated, as the lender indicated that the mortgage was paid in full. HUD’s records indicate that the debt owed pursuant to the Note is enforceable and past due. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. A Notice dated January 18, 2022, was mailed to Petitioner’s last-known address. Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$55,606.91 as the unpaid principal balance as of April 30, 2022;
- b. \$3,399.81 as unpaid penalties and administrative costs as of April 30, 2022; and,
- c. interest on said principal balance from May 1, 2022, at 2.0% per annum until paid.

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. HUD’s attempts to obtain Petitioner’s current income information were unsuccessful.

The Secretary proposes a repayment schedule of \$1,649.36 per month which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards. Alternatively, the Secretary proposes a repayment schedule in an amount equal to 15% of Petitioner’s’ disposable income.

The Secretary also requests a finding that the Petitioner's debt is past due and legally enforceable, that the Secretary is authorized to collect as requested, and that the stay of referral to the Department of the Treasury for collection by Administrative Wage Garnishment be vacated.

## DISCUSSION

On appeal, Petitioner alleges that the subject debt is unenforceable because the property associated with the debt was foreclosed. More specifically Petitioner claims that, “I have received a letter for possible garnishment of my wages for monies owed to the Department of Housing and Urban Development. I believe I don't owe any monies because my house at 8915 Balsam Glade Rd NW, Albuquerque, NM 87114, was foreclosed in 2019. I did not sell the property or refinance in any matter, it was foreclosed and then auctioned after it was foreclosed.” As support, Petitioner filed copies of court orders from the State of New Mexico Second Judicial District Court (August 13, 2019 and January 2, 2020) as proof of foreclosure; and payment records from Cascade Financial Services as proof of cause for foreclosure.

In response, the Secretary contends that “HUD’s records indicate that HUD did not conduct a foreclosure on Petitioner’s property, and HUD was not repaid because of the foreclosure that occurred. The foreclosure transaction had no bearing on the debt owed to HUD pursuant to the Note.” As support, the Secretary introduced into evidence copies of the Subordinate Note signed by Petitioner in which she agreed to pay the principal sum of the subject debt, and a sworn declaration from the Director of the Asset Recovery Division of HUD that further substantiates Petitioner’s agreement and non-compliance.

After reviewing the record further, the documents available show full satisfaction of the balance owed on the primary mortgage but not satisfaction of the balance owed on the Subordinate Loan. This Court has held that if, according to state law<sup>1</sup>, satisfaction of a senior deed of trust through a foreclosure sale prevents a junior trust holder from enforcing a junior trust deed on the same real property, that junior trust holder may collect the debt by initiating collection efforts based on the obligations in the loan note. *John Bilotta*, HUDBCA No. 99-A-CH-Y258 (December 29, 1999) citing *Kimberly S. (King) Thede*, HUDBCA No. 89-4587-L74 (April 23, 1990) citing *Alan Juel*, HUDBCA No. 87-2065-G396 (January 28, 1986). That is precisely what occurred in this case with HUD as the junior lienholder. As a result, the Secretary is entitled to seek separately collection of the subject debt against Petitioner under the assigned Note in this case. Petitioner has failed to meet her burden of proof that the debt owed to HUD as a junior lender was fully satisfied by the proceeds from the foreclosure proceeding.

For Petitioner to be released from her contractual obligation under the Subordinate Note, the proceeds from the foreclosure sale must have been sufficient to satisfy both the senior and junior liens, plus any reasonable expenses associated with the foreclosure sale. *Mortg. Elec. Registration Sys. v. Montoya*, 144 N.M. 264” (N.M. Ct. of Appeals 2008). Absent a showing to the contrary, the Court finds that Petitioner shall pay in full in the amount so claimed by the Secretary. *Maura O'Keefe*, HUDBCA No. 86-1194- F202 (January 7, 1986); *Lawrence P. Pappau*, HUDBCA No. 87-2381- G701 (July 31, 1987).

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<sup>1</sup> In the state of New Mexico, the general rule is that “where a number of liens are foreclosed in one suit and there is one judgment and an order of sale thereon directing the payment of the liens in a certain order, none of the holders of such liens are entitled to redeem, *but if the junior liens are not foreclosed the right of redemption still exist.*” (Emphasis added), *Mortg. Elec. Registration Sys. v. Montoya*, 144 N.M. 264, 268.” (N.M. Ct. of Appeals 2008).

As a final point, Petitioner would like to negotiate a payment plan that better suits her current financial circumstances. This matter was not raised earlier as a basis for her appeal. The Court now addresses this matter accordingly. While Petitioner may wish to negotiate repayment terms with the Government, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may wish to discuss this matter with Counsel for the Secretary or the Director of HUD's Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner may consider a request for review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

**ORDER**

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of the 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 equal to 15% of Petitioner's disposable pay.

SO ORDERED.  
  
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Vanessa L. Hall  
Administrative Judge

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**Finality of Decision.** Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).