

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

In the Matter of:

**Silvina Hernandez,**

Petitioner

22-VH-0151-AG-103

721018856

October 20, 2023

**DECISION AND ORDER**

On April 7, 2022, Silvina Hernandez (“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 (“HUD” or “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 April 14, 2022, 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 May 26, 2022, the Secretary filed her *Statement* along with documentation in support of her position. On November 8, 2022, Petitioner filed documentation as support for her claim and in compliance with the Orders issued by this Court. This case is now ripe for review.

## FINDINGS OF FACT

This action is brought on behalf of the Secretary of the United States Department of Housing and Urban Development (“Secretary” or “HUD”) pursuant to 31 U.S.C. § 3720D.

The Secretary contends in her *Statement* that in February 2016, the HUD-insured primary mortgage on Petitioner’s home was in default, and Petitioner was threatened with foreclosure. To prevent the lender from foreclosing, HUD advanced funds to Petitioner’s lender to bring the primary note current. In exchange for foreclosure relief, on February 9, 2016, Petitioner executed a Subordinate Note (“Note”) in the amount of \$39,069.66 in favor of the Secretary. Paragraph 4(A) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note.

On September 22, 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. Upon payment in full of the primary note, Petitioner was to make payment to HUD on the 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.” (Emphasis in original) Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner’s debt to HUD is delinquent.

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts through March 31, 2021:

- a) \$39,069.66 as the unpaid principal balance;
- b) \$162.75 as the unpaid interest on the principal balance at 1% per annum;
- c) \$2,404.27 as the unpaid penalties and administrative costs; and,
- d) Interest on said principal balance from April 1, 2022 at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated March 8, 2022, (“Notice”) was sent to Petitioner. 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. Petitioner did not enter into a written repayment agreement in response to the Notice.

HUD attempted to obtain a copy of Petitioner’s most recent pay statement, so that HUD could determine a repayment schedule based on Petitioner’s actual income. To date, however, Petitioner has not provided the pay statement to HUD. Therefore, the Secretary’s proposed repayment schedule is \$1,156.74 per month, which will liquidate the debt within three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner’s disposable pay.

## DISCUSSION

Petitioner contends in her *Hearing Request* that the subject debt does not exist, but Petitioner has failed to offer into evidence any support for her claim. Based on her recollection, Petitioner claims “I received other letters before, even I talked with the honorable Administrative Judge Vanessa L. Hall about the debt. I respectfully say, I didn't believe that debt was mine. I refinance the property with a private person a mean, not with a bank, which was a tremendous mistake...” There is no record of evidence that supports Petitioner's claim or supports her contention that she ever spoke directly with the Court in this case. However, the record does reflect the *Hearing Request* and subsequent letter Petitioner filed in writing for the Court's review. Without sufficient evidence, however, the Court cannot reasonably assess the credibility of Petitioner's claim.

The Secretary argues in her *Statement* that “[i]n her hearing request, Petitioner checked the boxes claiming that she does not owe the subject deb[t]; however, Petitioner provided no documentary evidence in support of her claim...” The Secretary is correct and has presented sufficient and credible evidence that Petitioner, upon default on the Note, must be held responsible for the full payment of the subject debt. In the absence of evidence to refute or rebut the allegations presented, the Secretary shall proceed accordingly.

Case law precedent has established that the Secretary's right to collect debt is governed by the terms of the Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). Here, Petitioner must produce evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518-H51 (January 27, 1988); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986). Petitioner has failed to produce either in this case so the Court must find that Petitioner's claim fails for lack of proof.


As a final point, Petitioner states, “I encourage you to give me the best solution in this matter. Went [to] talk with Vanessa the debt was \$22,000 or something like that. I tried to communicate with Vanessa L. Hall, but it was impossible.” It appears Petitioner is seeking to resolve this matter amicably. 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 Government. Petitioner may seek 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 also request a 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 issued on April 14, 2022 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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**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.*).