

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

In the Matter of:

**Andra Ben,**

Petitioner

22-VH-0217-AG-135

721018377

September 22, 2023

**DECISION AND ORDER**

On September 10, 2022, Andra Ben (“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”).

**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 September 23, 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 November 15, 2022, the Secretary filed her *Statement* along with documentation in support of her position. To date, Petitioner has failed to file sufficient documentary evidence in support of her claim or 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 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.

The Secretary contends in her *Statement* that Andra B. Ben (“Petitioner”) and Tammy R. Ben executed and delivered to the Secretary two Subordinate Notes, dated July 24, 2013 and May 23, 2016, for the combined total principal amount of 7,152.32.

As a means of providing foreclosure relief to Petitioner on two separate occasions, HUD advanced funds to Petitioner’s FHA insured mortgage lender, which was the holder of Petitioner’s primary mortgage note (“Primary Note”). In exchange for such funds, and on each such occasion, Petitioner executed a separate Subordinate Note in favor of the Secretary. More specifically, the Subordinate Notes (“Notes”) executed by Petitioner are a Subordinate Note in favor of HUD dated July 24, 2013, in the principal amount of \$2,984.40 (“Note 1”); and a Subordinate Note in favor of HUD dated May 23, 2016, in the principal amount of \$4,167.94 (“Note 2”).

By the terms of the Notes, the designated amount to be repaid becomes due and payable “(4)(A) on [a date specified in each of the Notes] 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; 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 July 27, 2020, the FHA mortgage insurance on Petitioner’s primary mortgage was terminated by the lender.

HUD has attempted to collect the amounts due under the Notes, but Petitioner remains delinquent and indebted to HUD. Petitioner is indebted to the Secretary in the following amounts:

- a) \$4,738.14 as the total unpaid principal balance as of October 30, 2022;
- b) \$15.80 as the unpaid interest on the principal balance at 1% per annum as of October 30, 2022; and,
- c) interest on said principal balance from October 31, 2022 at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner at her last known address on January 5, 2022. In accordance with 31 C.F.R. 285.11(e)(2)(ii), the Petitioner was afforded the opportunity to enter into a written repayment agreement under the terms agreeable to HUD. To date, Petitioner has not entered into any such agreement.

Treasury’s records indicate that a *Wage Garnishment Order* dated February 8, 2022 sent to Petitioner’s employer. Based on the issuance of that Order, Petitioner has been garnished seven (7) times, totaling \$816.47. All garnishments, according to the Secretary, are reflected in the balance previously claimed by HUD.

Because Petitioner failed to provide any contact information in her *Hearing Request* form, HUD was unable to contact Petitioner to request a copy of her recent pay statement. To date,

Petitioner has not provided HUD with her current pay information. The last wage garnishment was received on July 7, 2022, in the amount of \$136.62. Accordingly, the Secretary's proposed payment schedule is \$136.62 per pay period or 15% of Petitioner's disposable pay.

### DISCUSSION

Petitioner contends in her *Hearing Request* that she does not owe the subject debt, but she has failed to offer evidence in support her claim. Petitioner's claim is merely an allegation without sufficient proof. As a result, the Court cannot reasonably assess the credibility of Petitioner's position.

However, the record does show that the Secretary has met her burden of proof that Petitioner owes the subject debt. In her *Statement*, the Secretary acknowledges that Petitioner provided three unexecuted "Release of Lien" documents. The significance of these documents remains unclear to HUD as such documents have not been signed by the parties and, most importantly, have not been executed by HUD. The Secretary maintains that because the Petitioner has "provided no evidence that the debt to HUD has been paid, or that HUD has released its liens, Petitioner is responsible for the subject debt." The Court agrees.

Case law precedent has established that the Secretary's right to collect debt in such cases emanates from the terms of the Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). Similarly in this case, for Petitioner not to be held liable for the subject debt, she 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 evidence of a written release from HUD that discharges Petitioner for the debt associated with the Subordinate Notes and has failed to produce evidence of valuable consideration in satisfaction of the subject debt. Unless proven otherwise, Petitioner's payment obligation under the terms of the Notes remains intact. Therefore, the Court finds that Petitioner shall pay in full the subject debt.

Finally, 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).

Accordingly, pursuant to Rule 26.4(d), Petitioner's non-compliance with the Orders issued by this Court in this case also provides a separate basis for rendering a decision against Petitioner.

**ORDER**

Based on the foregoing, the Order issued on September 23, 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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**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.