

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

In the Matter of:

Linda Watson

Petitioner

23-VH-0027-AG-017

721018065

February 13, 2024

DECISION AND ORDER

On December 12, 2022, Linda Watson (“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 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 January 11, 2023, the Secretary filed her *Statement* along with documentation in support of her position. Petitioner filed documentary evidence in support of her claim on November 21, 2023. 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.

The Secretary contends that in or about July 13, 2020, 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 May 24, 2013, Petitioner executed a Partial Claims Promissory Note ("Note") in the amount of \$148,990.85 in favor of the Secretary. Paragraph 3(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 or about July 13, 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 "U.S. Department of HUD, C/O DEVAL LLC, Westpoint 1 – 1255 Corporate Drive, Suite 300, Irving, TX 75038 ... or any such other place as [HUD] may designate in writing by notice to Borrower."

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 November 30, 2022:

- (a) \$148,990.85 as the unpaid principal balance;
- (b) \$2,233.98 as the unpaid interest on the principal balance at 1% per annum;
- (c) \$18,292.37 as the unpaid penalties and administrative costs; and
- (d) Interest on said principal balance from December 1, 2022, at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated October 20, 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.

Petitioner was contacted by email on December 19, 2022, requesting a copy of her current pay stub. According to the Secretary, Petitioner has not provided HUD with this

document to date. Without this information, HUD is unable to determine a proposed repayment schedule under a wage garnishment order. The Secretary's proposed repayment schedule is 15% of Petitioner's disposable pay.

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

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 from Wells Fargo, the record lacks evidence that otherwise proves full satisfaction of the subject debt owed to HUD or proves that the subject debt herein no longer exists. As a result, the Court is unable to assess the credibility of Petitioner's position based on the evidence presented.

However, 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 Note in this case is considered a separate and distinct debt from the primary mortgage. As a result, it would be considered a junior trust deed that should be enforced. See Catherine Coley, HUDOA No. 16-VH-0147-AG-039 at 3 (July 24, 2017).


The Note states 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 Note. When Petitioner failed to pay the Note as agreed, the full amount of the Note immediately became due and payable. 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 Note 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.

ORDER

Based on the foregoing, the Order issued on December 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

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.*).