

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

In the Matter of:

Hannah Saucier,

Petitioner

Docket No. 23-VH-0074-AG-039

Claim No. 780821291

February 22, 2024

DECISION AND ORDER

On March 23, 2023, Hannah Saucier (“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 March 24, 2023, 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 March 31, 2023, the Secretary filed her *Statement* along with documentation in support of his position. Petitioner filed, on July 19, 2023, a *Statement* in support of her claim that the debt did not exist. 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.

According to the Secretary, on December 6, 2018, Petitioner executed and delivered to Vanderbilt Mortgage and Finance, Inc., a Consumer Loan Note and Secretary Agreement (“Note”) in the amount of \$64,863.39, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. Petitioner failed to make payment on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54, on November 8, 2021, Vanderbilt Mortgage and Finance, Inc. assigned the Note to the United States of America. The Secretary is the holder of the Note on behalf of the United States of America. The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. As a result, Petitioner remains in default on the Note. Petitioner is justly indebted to the Secretary in the following amounts as of March 26, 2023:

- (a) \$4,444.75 as the unpaid principal balance;
- (b) \$18.50 as the unpaid interest on the principal balance at 1% per annum;
- (c) \$26.92 as the unpaid penalties and administrative costs; and;
- (d) Interest on said principal balance from March 27, 2023, at 1% per annum until paid.

Pursuant to 31 C.F.R. § 285.11(e), the Secretary states that a Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated March 7, 2023, 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 under mutually agreeable terms. Petitioner did not enter into a written repayment agreement or pay the debt in full based on the Notice.

HUD attempted to obtain a recent pay statement from Petitioner to calculate a repayment schedule based on Petitioner’s actual income. To date, however, the requested documentation has not been provided. Therefore, the Secretary’s proposed repayment schedule is \$124.73 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner’s disposable pay.

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

DISCUSSION

Petitioner claims that the subject debt does not exist because “The trailer bought in this case was bought with my ex-fiancé and when we went our separate ways it was on his family's land. I could afford the trailer payments[,] but I could not afford to have the trailer relocated so that I could pursue the payments.” Beyond her allegation regarding the existence of the debt, the record of evidence fails to support her position.

For Petitioner not to be held liable for the full amount of the subject debt, a mere allegation is insufficient as proof that the subject debt never existed. There must either be a release in writing from the former lender [herein HUD] explicitly relieving Petitioner of her obligation, or proof of “valuable consideration accepted by the lender” indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Petitioner has failed to produce either in this case.

Case law precedent has consistently 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)). Here, the Consumer Loan Note (“Note”) is considered a separate and distinct debt from the primary mortgage. See Catherine Coley, HUDOA No. 16-VH-0147-AG-039 at 3 (July 24, 2017). So, the Note remains intact and in default.

The terms of the Note clearly state what triggers a secured party’s right to cure the default is the borrower’s default on payment of any installment of the total number of installments due on the Note. In this case, once the Petitioner failed to pay, the remaining balance became immediately due and payable in full. Without evidence from the Petitioner to prove that the debt was fully paid or otherwise no longer existed, Petitioner’s obligation to pay the balance remains intact. As a result, the Court finds that Petitioner’s claim fails for lack of proof.

Next, Petitioner contends that “I am a single mother trying to attend college with no job,” and “I have no income as of right now, I have no collateral of any sort.” However, Petitioner has failed to offer proof of unemployment, length of reemployment, or proof of hardship, despite the Court issuing an Order for her produce such evidence for the Court’s review. Because Petitioner has not met the burden of proof required to proceed, the Court is unable to determine the credibility of Petitioner’s allegation that she has no income or is unemployed. The Court again finds that Petitioner’s claim fails for lack of proof.


Finally, Petitioner claims “I do not know who I need to speak with about any of this. Is there any way you could point me in the right direction?” Petitioner is reminded that she was not only notified in her *Notice of Intent to Initiate Wage Garnishment* to consider a repayment plan or a request for review of her current financial state, but, she was also notified where to find additional information regarding this debt in her *Notice of Docketing* in which it stated “**Documents relating to this alleged debt are not in the possession of this Court.** Petitioner may request copies of these documents by writing to: OHA Appeals Coordinator, U.S. Department of Housing and

Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY 12203.” Petitioner was given sufficient notice and opportunities to pursue available resources that would address her concerns, but Petitioner failed to do so. Should Petitioner’s current financial state persist, Petitioner may wish to consider discussing this matter with 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 wish to consider requesting a review of her financial status in the future by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

Based on the foregoing, the *Notice of Docketing* issued on March 24, 2023 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. Pall
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.*).