

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

In the Matter of:

**Pamela Fox**

Petitioner.

19-VH-0165-AO-052

7-210153020A

November 13, 2020

**DECISION AND ORDER**

On July 30, 2019, Pamela Fox (“Petitioner”) filed a hearing request concerning a proposed administrative offset relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“Secretary”).

**JURISDICTION**

The Office of Hearings and Appeals has jurisdiction to determine whether Petitioner’s debt is past due and legally enforceable pursuant to 24 C.F.R. §§ 17.61 *et. seq.* The administrative judges of this Court, in accordance with the procedures set forth at 24 C.F.R. §§ 17.69 and 17.73, have been designated to conduct a hearing to determine, by a preponderance of the evidence, whether the alleged debt is past due and legally enforceable.

**PROCEDURAL HISTORY**

Pursuant to 31 C.F.R. § 285.11(f) (4), on July 31, 2019, 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 August 21, 2019, Petitioner filed her *Statement* along with documentation in support of her position. In response, on October 30, 2019, the Secretary filed his *Statement* along with documentary evidence in support of his position. 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 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 allegedly owed to the United States government.

On or about February 11, 2011, Pamela S. Fox (Petitioner) executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$9835.92. *Secretary's Statement* ("Sec'y. Stat.") ¶ 2, Ex. 1, *Declaration of Gary Sautter*<sup>1</sup> ("Sautter Decl."), ¶ 4. As a means of providing foreclosure relief to Petitioner, 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, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat.* ¶ 3; *Sautter Decl.*, ¶ 4.

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)(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." *Sec'y. Stat.* ¶ 4, Ex. 2, at ¶ 4; *Sautter Decl.*, ¶ 4.

On or about February 4, 2019, the FHA mortgage insurance on the primary mortgage was terminated, as the lender indicated the primary note and mortgage was paid in full. Exhibit 1, ¶ 4. HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent and indebted to HUD. *Sec'y. Stat.*, ¶ 4, Ex. 1, ¶ 4.

HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent and indebted to HUD. *Sec'y. Stat.*, ¶ 6; Ex. 1, ¶ 5. As a result, Petitioner remains indebted to the Secretary in the following amounts:

- a. \$46,856.23 as the total unpaid principal balance as of August 31, 2019;
- b. \$24.57 as the unpaid interest on the principal balance at 1% per annum as of August 31, 2019;
- c. \$0.00 as the unpaid penalties and administrative costs as of August 31, 2019; and
- d. interest on said principal balance from September 1, 2019 at 1% per annum until paid.

*Sec'y. Stat.*, ¶ 8; Ex. 1, *Sautter Decl.*, ¶ 5.

A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner on August 1, 2019 Id.

The Secretary is requesting a finding that the Petitioner's debt is past due and legally enforceable; and that the stay of referral of this matter to the U.S. Department of Treasury for collection by Treasury Offset be vacated, so that administrative offset may proceed against Petitioner.

---

<sup>1</sup> Gary Sautter is the Acting Director of Asset Recovery Division for the U.S. Housing and Urban Development.

## DISCUSSION

Petitioner contends that she does not owe the subject debt because it was paid in full upon being transferred to Ocwen Loan Servicing. Petitioner states, “I am requesting a copy of your records that is [sic] related to the debt that you are requesting of me.” She further states, “I am requesting for a copy of my loan service transfer from GMAC to Ocwen [Loan Servicing] and a copy of my account that shows the payoff that was made on this account in January 2019.” As support Petitioner introduced into evidence a copy of a *Verification of Mortgage* from Ocwen Loan Servicing, and a petition for bankruptcy to the United States Bankruptcy Court for the Northern District of Indiana, which later granted Petitioner discharge on February 8, 2010.

In response to Petitioner’s request for records associated with the subject debt, the Court issued a *Notice of Docketing* to Petitioner, on August 23, 2017, in which Petitioner was informed that, “**Documents relating to this alleged debt are not in the possession of this Court. Petitioner may request copies of these documents by writing to:** Cheryl Dobert, U.S. Department of Housing and Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY 12203.” On examination of the *Verification of Mortgage* from Ocwen Loaning Service, the Court determined that such documentation merely provided validation for the amount of the mortgage for which Petitioner would be held responsible. Further, the subsequent discharge by the United States Bankruptcy Court for the Northern District of Indiana is considered irrelevant in this case because the date of Bankruptcy Court’s discharge pre-dates, by one year, the date Petitioner executed the Note associated with the subject debt. So, it could not possibly establish credibility regarding the enforceability of the subject debt since the subject debt, executed in February 2011, did not exist at the time of the discharge order that was issued in 2010.

For Petitioner not to be held liable for the full amount of the subject debt, there must either be a release in writing from the former lender explicitly relieving Petitioner’s obligation, “or valuable consideration accepted by the lender” indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). In this case, Petitioner has failed to produce sufficient proof of a written release directly from HUD that discharges Petitioner for the debt associated with the Note. She has also failed to produce sufficient evidence of valuable consideration paid to HUD in satisfaction of the subject debt. As a result, Petitioner remains contractually obligated to pay the debt so claimed by the Secretary.

Based on a review of the existing record, this Court is unable to determine the credibility of Petitioner’s claim in the absence of sufficient evidence from Petitioner that either refutes or rebuts what the Secretary has introduced as evidence of enforceability. It is well established that “assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due and legally enforceable.” Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, the Court must find, consistent with case law precedent, that Petitioner’s claim fails for lack of proof.

**ORDER**

Based on the foregoing, Petitioner remains legally obligated to pay the alleged debt in the amount so claimed by the Secretary.

The *Order* imposing the stay of referral of this matter to the U.S. Department of Treasury on July 31, 2019 for administrative offset is **VACATED**. It is hereby

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset in the amount so claimed by the Secretary.

SO ORDERED.



Vanessa L. Hall  
Administrative Judge