

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

In the Matter of:

Dawn Ciafardoni,

Petitioner.

22-VH-0041-AO-004

7-210185690A

April 24, 2023

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on November 30, 2021, by Dawn Ciafardoni (“Petitioner”) concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. 3720A), authorizes federal agencies to use administrative offsets as a mechanism for the collection of debts allegedly owed to the United States government.

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 24 C.F.R. § 17.81(a), on December 1, 2021, the Court stayed the issuance of an administrative offset of any federal payment due to Petitioner until the issuance of this written decision. *Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”) at 2. In response to the *Notice*, Petitioner filed a *Motion for Sanctions and Dismissal with Prejudice (Motion)* on August 12, 2022 that later the Court held in abeyance on August 15, 2022. On August 24, 2022, the Secretary filed her *Statement* along with documentary evidence in response to the Court’s Order. Petitioner thereafter responded on August 30, 2022 to the Secretary’s allegations and the Court’s Order by submitting her *Statement* along with documentary evidence in support of her 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 3720A, as a result of a defaulted loan that was insured against non-payment by the Secretary.

The HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Secretary's Statement (Sec'y. Stat.)*, ¶ 2; Ex. B, Note. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary mortgage current. *Sec'y. Stat.*, ¶ 3, Ex. A, *Declaration of Gary Sautter (Sautter Decl.)*, ¶ 3. In exchange for foreclosure relief, on August 1, 2013, Petitioner executed a Partial Claims Promissory Note ("Note") in the amount of \$46,465.50 in favor of the Secretary. *Sec'y. Stat.*, ¶ 4, Ex. A, *Sautter Decl.*, ¶ 3.

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. *Sec'y. Stat.*, ¶ 5, Ex. A, *Sautter Decl.*, ¶ 4. On or about May 8, 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. *Sec'y. Stat.*, ¶ 6, Ex. A, *Sautter Decl.*, ¶ 4. 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." *Sec'y. Stat.*, ¶ 7, Ex. B, Note.

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. *Sec'y. Stat.*, ¶ 8, Ex. A, *Sautter Decl.*, ¶ 5. Petitioner is justly indebted to the Secretary in the following amounts as of June 30, 2022:

- a. \$46,465.50 as the unpaid principal balance;
- b. \$387.10 as the unpaid interest on the principal balance at 1 % per annum;
- c. \$2,849.50 as the unpaid penalties and administrative costs; and
- d. interest on said principal balance from July 1, 2022 at 1 % per annum until paid.

Sec'y. Stat., ¶ 9, Ex. A, *Sautter Decl.*, ¶ 5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated October 18, 2021, was mailed to Petitioner's last known address. *Sec'y. Stat.*, ¶ 10, Ex. A, *Sautter Decl.*, ¶ 6.

Southern Essex County Massachusetts Recorder's Office has record of HUD's Subordinate Mortgage recorded on August 22, 2013, as Document #2013082200408, Book 32765, Page 272, (Exhibit A). It is not clear why HUD's recorded lien was not reflected in the JCW Title Report provided by Petitioner's attorney. *Sec'y. Stat.*, ¶ 11, Ex. A, *Sautter Decl.*, ¶ 7; Ex. C, Title. The May 26, 2020 Discharge of Mortgage provided by Petitioner's attorney

indicates a release of the FHA insured first mortgage dated April 30, 2010, in the amount of \$267,438.00. Petitioner's attorney has provided no evidence that HUD's Partial Claim Promissory Note in the amount of \$46,465.50 was paid as a result of this transaction. *Sec'y. Stat.*, ¶ 12, Ex. A, *Sautter Decl.*, ¶ 7; Ex. D, Discharge. The April 29, 2020 Payoff Statement issued by PHH Mortgage provided by Petitioner's attorney indicates a payoff of the FHA first mortgage in the amount of \$181,087.26. *Sec'y. Stat.*, ¶ 13, Ex. A, *Sautter Decl.*, ¶ 8; Ex. E, Payoff. The Secretary requests a finding that the Petitioner's debt is past due and legally enforceable. Id.

DISCUSSION

Petitioner claims that she does not owe the subject debt because it was paid in full at settlement. According to Petitioner, "Attorney Hall wrote in an April 29, 2020 email that 'This [PHH Mortgage Services] payoff releases both mortgages of record.'... Attorney Lagana provided Mr. Hall's email and the accompanying payoff statement contained in 'Exhibit A'. Attorney Lagana's email is also included herewith as 'Exhibit B', where she also believes the Subordinate Mortgage was paid off and did not appear in a subsequent title examination. The undersigned counsel emailed Attorney Hall on August 25, 2022 [and] asked for clarification as to how he concluded that both mortgages (the purchase money and the subordinate mortgage) were both being paid off by one payment to PHH Mortgage Services. Attorney Hall's response is still pending." *Petitioner's Response* filed August 30, 2022. Petitioner further claims that she "contacted PHH Mortgage Services to independently verify Attorney Hall's representation that both mortgages were paid off, and whether PHH collected amounts due to HUD but failed to remit them to HUD. PHH Mortgage Services has referred her to their research department and advised that it will take at least ten (10) days before an answer can be provided to her." *Id.* As support for her position, Petitioner introduced into evidence copies of email communications from PCM Title Company and PHH Mortgage, a *Payoff Statement* from PHH Mortgage, and an email communication from Kevin Hall (closing attorney), all of which were related to Petitioner's claim about the subject debt. *Id.*, Attachments.

Upon reviewing the evidence, the Court has determined that Petitioner has failed to meet her burden of proof. For Petitioner not to be held liable for the full amount of the debt, there must be either a release in writing from the former lender (herein HUD) explicitly relieving Petitioner's obligation, "or valuable consideration accepted by that lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). The evidence presented by Petitioner through email communications from PCM Title Company and PHH Mortgage, and the *Payoff Statement* from PHH Mortgage, consistently show that the FHA primary mortgage was the only loan that was paid in full. While Petitioner indicates in her *Response* that she was seeking clarification and proof that both mortgages were satisfied at settlement, there is no record that such clarification was provided. As a result, there is nothing in the record that could otherwise sufficiently prove full satisfaction of the subject debt associated with the Subordinate Note.

Because Petitioner has not offered any evidence of a written release specifically from HUD that discharges Petitioner from the subject debt or offered any proof of valuable consideration paid to HUD in satisfaction of the subject debt, Petitioner has failed to meet her burden of proof that she does not owe this debt.

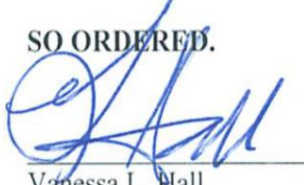
It is well established that “assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due and legally enforceable.” Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, in the absence of evidence from Petitioner to otherwise refute or rebut the Secretary’s claim, the Court must find that Petitioner remains contractually obligated to pay the debt so claimed by the Secretary.

ORDER

Based on the foregoing, Petitioner remains legally obligated to pay the subject debt in the amount so claimed by the Secretary. Petitioner’s *Motion for Sanctions and Dismissal* earlier held in abeyance on August 15, 2022 is hereby **DENIED**.

The *Order* imposing the stay of referral of this matter to the U.S. Department of Treasury on December 1, 2021 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

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.