

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

In the Matter of:

Rocio Garcia,

Petitioner.

22-VH-0092-AO-011

7-210186730A

November 29, 2023

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on January 19, 2022 by Rocio Garcia (“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 January 28, 2022, the Court stayed the issuance of an administrative offset of any federal payment due to Petitioner until the issuance of this written decision. On December 7, 2022, the Secretary filed her *Statement*, along with documentary evidence, in support of her position. Petitioner, on June 29, 2022 and July 7, 2022, filed documentary evidence in support of his position in response to the Court’s orders. This case is now ripe for review.

FINDING OF FACTS

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A, because of a defaulted loan that was insured against non-payment by the

Secretary.

In her *Statement* the Secretary maintains that Rocio Garcia (“Petitioner”) obtained a HUD-insured mortgage loan to purchase the subject property. Following Petitioner’s default under the HUD-insured mortgage, HUD approved a partial claim to protect Petitioner from foreclosure and bring his delinquent mortgage arrears current. In exchange for foreclosure relief, Petitioner executed a Subordinate Note (“Note”) on May 25, 2018 in the amount of \$15,420.77 in favor of the Secretary.

The Subordinate Note does not require periodic payments but mandates the full repayment of the principal balance upon the earlier of: (1) July 1, 2046; (2) payment in full of the primary, HUD-insured note; (3) the acceleration of the primary, HUD-insured note; (4) the termination of HUD insurance; or (5) the property securing the note is no longer used as Petitioner’s primary residence.

On or about September 1, 2020, Petitioner’s primary, HUD-insured mortgage was paid in full and payment to HUD became due pursuant to paragraphs 4(a)(i) and (iii) of the Subordinate Note. The Secretary has made efforts to collect this debt from Petitioners but has been unsuccessful. Therefore, Petitioners are justly indebted to the Secretary in the following amounts:

- (a) \$15,420.77 as the unpaid principal balance as of September 30, 2022;
- (b) \$167.05 as the unpaid interest on the principal balance at 1.0% per annum through September 30, 2022;
- (c) \$980.61 as the unpaid Penalties and Administrative Costs as of September 30, 2022.
- (d) interest on said principal balance from October 1, 2021, at 1.0% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment dated December 13, 2021 was sent to Petitioners. “In his June 17, 2022 email deemed Petitioner’s Motion for Extension of Time, Petitioner proffered evidence that he paid off his primary mortgage serviced by Shellpoint Mortgage Servicing in the sum of \$175,177.13. However, neither evidence of Petitioner’s payment nor HUD’s records indicate that any of these proceeds were remitted to HUD to satisfy the Secretary’s Subordinate Note.”

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

DISCUSSION

Petitioner denies the existence and enforceability of the subject debt because he claims that the subject debt was paid off when the primary mortgage was satisfied. Petitioner is in error.

The Note in this case is a separate and distinct debt from the primary mortgage. See

Catherine Coley, HUDOA No. 16-VH-0147-AG-039 at 3 (July 24, 2017). The language of the Note clearly states that it [subject debt] becomes due and payable when “Borrower has paid in full all amounts due under the primary Note and related mortgage deed of trust or similar Security Instruments insured by the Secretary.” That happened in this case. Petitioner offered as evidence a copy of the Payoff Statement from Shell Mortgaging Services as proof of satisfaction of the instant debt, but that statement only reflected payment in full of \$175,177.13. Upon reviewing the evidence further, the Court determined that such payment only satisfied the primary mortgage and not the subject debt.


For Petitioner to prove full satisfaction of the subject debt, there must be either a release in writing directly from the former lender (herein HUD) explicitly relieving Petitioner’s obligation to HUD, “or valuable consideration accepted by the lender” indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); see also Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). In this case, when Petitioner failed to pay the Note as agreed, the Note immediately became due and payable. Without evidence from Petitioner of either a release or valuable consideration for the subject debt, Petitioner remains obligated to pay in full the subject debt. This Court has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, the Court finds 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 on January 28, 2022 to the U.S. Department of Treasury 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

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.*).

