



**Office of Appeals  
U.S. Department of Housing and Urban Development  
Washington, D.C. 20410-0001**

In the Matter of:

**Joan Welch,**

Petitioner

HUDOA No. 10-H-CH-LL05  
Claim No. 721004490

Pro se

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For the Secretary

**DECISION AND ORDER**

Petitioner was notified that, pursuant to 31 U.S.C. §§ 3716 and 3720A, the Secretary of the U.S. Department of Housing and Urban Development ("HUD") intended to seek administrative offset of any federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD.

Petitioner made a request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The administrative judges of the Office of Appeals have been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. §§ 17.152 and 17.153. As a result of Petitioner's hearing request, referral of the debt to the U.S. Department of the Treasury for administrative offset was temporarily stayed by this Office on November 10, 2009 until the issuance of a written decision by the administrative judge. 24 C.F.R. § 17.156.

## Background

On February 17, 2004, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$8,036.00 to secure a partial claim paid by the Secretary to pay the arrearages on her primary FHA-insured mortgage and to avoid the foreclosure of her primary residence. (Secretary's Statement ("Sec'y Stat."), filed February 17, 2010, ¶ 4, Ex. 1.) The Subordinate Note becomes due and payable when the original FHA mortgage matures, when the borrower pays the primary Note in full, when the maturity date of the primary Note has been accelerated, when the Note or related security instrument is no longer insured by the Secretary or when the property is no longer occupied by the purchaser as her principal residence. (*Id.* at ¶ 5, Ex. 1, ¶ 4(A).)

The Secretary is the holder of the Subordinate Note, which expressly states that payment shall be made to the Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410. (*Id.*, Ex. 1, ¶ 4(B).) On or about June 24, 2004, the FHA mortgage insurance on the original Note and Security Instrument was terminated as the mortgagee indicated the mortgage was paid in full. (*Id.* at ¶ 6, Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated February 12, 2010, ¶ 4.) Consequently, pursuant to the terms and conditions of the Subordinate Note, payment is due in full. (*Id.* at ¶ 7.)

HUD has attempted to collect the amounts due under the Subordinate Note, but Petitioner remains delinquent. (*Id.* at ¶ 8, Ex. 2, Dillon Decl., ¶ 5.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

- (a) \$3,649.43 as the unpaid principal balance as of January 30, 2010;
- (b) \$36.48 as the unpaid interest on the principal balance at 4% per annum through January 30, 2010; and
- (c) interest on the principal balance from February 1, 2010 at 4% per annum until paid.

(*Id.* at ¶ 11, Ex. 2, Dillon Decl., ¶ 5.) A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner on August 13, 2007. (*Id.* at ¶ 9, Ex. 2, Dillon Decl., ¶ 6.) The Secretary used due diligence in notifying Petitioner that the Secretary intended to collect via offset and satisfied the requirements of 24 C.F.R. § 17.151 and 31 U.S.C. § 3716(a). (*Id.* at ¶ 10, Ex. 2, Dillon Decl., ¶¶ 6, 7.)

## Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides Federal agencies with a remedy for the collection of debts owed to the United States Government. Petitioner bears the initial burden of submitting evidence to prove that the debt is not past-due or legally enforceable. 24 C.F.R. § 17.152(b); *Juan Velazquez*, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

Petitioner contests the existence of the debt as not being owed. Petitioner asserts that HUD does not have the right to pursue collection of this debt because: 1) Petitioner never made a loan with HUD; 2) there was some confusion with the address the Secretary was using as a point of contact; 3) Petitioner's signature "looked like [her] signature," but might not have belonged to her; and 4) repayment of the debt would cause Petitioner financial hardship.

First, Petitioner asserts that HUD does not have the right to pursue collection of this debt because she never made a loan with HUD. Petitioner states that she "never borrowed any monies from H.U.D., and did not receive any monies from H.U.D." (Petitioner's Letter ("Pet'r Nov. Ltr."), filed November 9, 2009.) Petitioner states: "I don't have any explanation, except that I did not make a loan with H.U.D. for \$11,000, or for whatever the debt amount is." (Petitioner's Letter ("Pet'r Jan. Ltr."), filed January 21, 2010.) Beyond Petitioner's mere allegations that this loan never existed, she has failed to produce documentation that successfully rebuts the evidence submitted by the Secretary.

While Petitioner maintains that she never made the loan, the Secretary produced a copy of the Subordinate Note that bore Petitioner's signature and reflected Petitioner's promise to pay the amount claimed to the order of the lender that, in this case, is HUD. This evidence remains unrebutted by Petitioner. This Office has maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable." *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996); see also *Elizabeth Aragon*, HUDBCA No. 97-C-SE-W231 (October 28, 1997) (citing *Nona Mae Hines*, HUDBCA No. 87-1907-G240 (February 4, 1987)). Therefore, I find that Petitioner's claim fails for lack of proof.

Second, Petitioner asserts that HUD does not have the right to pursue collection of this debt because there was some confusion with the address the Secretary was using as point of contact. 24 C.F.R. § 17.151 provides that "[a] request for deduction from a Federal payment will be made only after the Secretary . . . provides the debtor with 65 calendar days written notice." In addition, 31 U.S.C. § 3716(a) provides "[t]he head of the agency may collect by administrative offset only after giving the debtor written notice of the type and amount of the claim, the intention of the agency to collect the claim by administrative offset, and an explanation of the rights of the debtor . . . ."

In this case, Petitioner states: "[M]y address has never been 615 Jackson St., North Las Vegas, Nevada 89036, which is the address your correspondence claimed you used for contacting me." (Pet'r Nov. Ltr.) Petitioner continues: "That address you were using is a combination of [2] erroneously obtained addresses you somehow received." (*Id.*) Petitioner further asserts that she has used "for 15 years [sic], [for all correspondence] . . . P.O. Box 363443 . . . in North Las Vegas, Nevada with the 89036 zip code," that "[t]he IRS has [sic] used that address to reach me for the past 12 years," and that "[she has] never, ever used 615 Jackson for a mailing address." (*Id.*)

The Secretary responds that he “used due diligence in notifying Petitioner that the Secretary intended to collect via offset and satisfied the requirements of 24 CFR 17.151 and 31 U.S.C. 3716(a).” (Sec’y Stat., ¶ 10.) As support, the Secretary provides:

A Demand Notice dated May 29, 2007 was mailed to Petitioner at 3739 Nairobi Lane, North Las Vegas, NV 89030. The Notice was returned to HUD by the Post Office indicating “attempted no known.” (Exhibit A). On June 28, 2007, HUD obtained an Experian Social Search Report to determine Petitioner’s current address. The Experian Social Search Report indicates that the current address for Petitioner was 615 Jackson, North Las Vegas, NV 89036. A new Demand Notice was mailed to Petitioner on June 28, 2007, at the 615 Jackson, North Las Vegas, NV 89036 address. The Notice was returned to HUD by the Post Office indicating, “no such street.”

A Notice of Intent To Collect By Treasury Offset dated August 13, 2007 was mailed to Petitioner at the 615 Jackson, North Las Vegas, NV 89036 address. The Notice was returned by the Post office indicating, “no such street[.]” In a further attempt to find Petitioner’s current address a request was sent to the IRS Debtor Address Request function known as, “TOP Client” which allows agencies to request debtor addresses online from the Internal Revenue Service. HUD’s “DMCS Case Remarks / History” notes (Attached as Exhibit D) indicates the TOP Client Report was received on September 18, 2007, and provided no new address. Despite the fact that the Petitioner did not receive the Notice, the Secretary has met the Notice requirements set forth at 24 C.F.R. 17.151 and 31 U.S.C. 3716(a).

(Sec’y Stat., Ex. #2; Dillon Decl., ¶¶ 6,7.)

This Office has held that a “Notice of Intent is effective upon dispatch, if properly and reasonably addressed.” *Shirley Robinson*, HUDOA No. 08-H-CH-JJ43 (September 25, 2008), *citing Kenneth Holden*, HUDBCA No. 89-3781-K293 (June 6, 1989) (emphasis added.). This Office also has concluded that the same reasonable standard, established in *Kenneth Holden* and *Shirley Robinson*, can similarly be applied to demands for payment alleged to be improperly addressed.

The requirements of 31 U.S.C. § 3716(a) were satisfied in this case by sending a written notice to Petitioner’s last known address at 615 Jackson, North Las Vegas, NV 89036, and providing Petitioner with the opportunity to be heard prior to certifying his account for offset. Here, the Secretary has provided sufficient documentary evidence that the Notice of Intent to Collect by Treasury Offset was sent to Petitioner’s last known address pursuant to 31 U.S.C. § 3716 (a). Therefore, I find that the Notice sent to Petitioner was legally sufficient.

Third, Petitioner contends that the debt is unenforceable because her name may have been forged on the Note that is the subject of this proceeding. As support, Petitioner states: “[T]he signature you asked me about on that packet of papers that you sent to me,

to review, which was indicative of some kind of loan transaction looked like my signature. But with that statement I also said that you know as well as I know that people can cut out your bona fide signature from one paper and paste and copy it onto another paper.” (Pet’r Nov. Ltr.) Petitioner further contends: “I also said that the mortgage co. itself could have easily done a fraudulent transaction, behind my back. I told you that this mortgage co. was brought upon real estate fraud charge about 3 yrs after I had purchased my home through them.” (*Id.*) However, other than Petitioner’s claim of forgery, Petitioner has failed, by a preponderance of the evidence, to submit documentary evidence to substantiate her claim of forgery.

This Office addressed the standard for ascertaining the authenticity of an alleged forgery in *Justito Poblete*, a case in which the Petitioner raised forgery as a defense against the enforceability of the debt. *Justito Poblete*, HUDBCA No. 98-A-SE-W302 (April 30, 2001). This Office noted that “[a]s a holder in due course of the instruments evidencing Petitioner’s indebtedness, the Secretary is subject to all defenses, including forgery, which Petitioner could assert against the lender or any subsequent assignees under governing state law.” *Justito Poblete*, HUDBCA No. 98-A-SE-W302 at 2 (April 30, 2001) (citing *Connie Morgan*, HUDBCA No. 92-A-NY-P789 (June 23, 1993)). In *Justito*, the administrative judge stated: “This Board [Office] must ascertain if Petitioner’s signature is authentic on the...Note to the extent that Petitioner is legally bound by [her] apparent signature.” *Justito* at 2. “This Board [Office] must reach its finding by examining the evidence in the record of this proceeding and determining if Petitioner can establish, by a preponderance of the credible evidence, [her] proposition that [s]he did not execute the...Note at issue.” *Id.* The Petitioner in *Justito* provided documentary evidence in support of forgery, but the evidence was insufficient for a determination of forgery due to the lack of “documentation of an expert analysis comparing Petitioner’s signature on the note with the submitted specimens.” *Justito* at 6. Administrative judges are not handwriting experts, and as such, must depend upon the scientific testimony of experts in order to find that a forgery has occurred. Such testimony is absent in the record of this proceeding.

This Office has decided a number of cases where forgery has conclusively been demonstrated. In *Justito*, this Office stated that oftentimes forgery “involves situations where the handwriting is clearly different or where the preponderance of the evidence, oftentimes with expert assistance, establishes that a signature is false.” *Justito* at 6 (citing *Kness-Steed*, HUDBCA No. 96-C-CH-V138 (June 24, 1997); *Wilson*, HUDBCA No. 90-5179-L658 (August 2, 1990)). But in this case, in the absence of documentation of an expert analysis comparing Petitioner’s signature on the note with other specimens, a conclusive decision in Petitioner’s favor on this issue cannot be made due to such lack of evidence. Therefore, consistent with *Justito*, this Office finds that Petitioner has failed to rebut the presumption of authenticity of her signature on the note, and also has failed to produce evidence to establish that her signature on this document, dated February 17, 2004, is forged.

While Petitioner has failed to submit any documentary evidence to substantiate that the debt is unenforceable due to forgery, the Secretary has submitted a copy of the Note at issue that Petitioner signed on February 17, 2004 and delivered to the Secretary. (Sec'y Stat., ¶ 4, Ex. 1.) In the Note, Petitioner agreed and accepted the terms and covenants contained therein, one of which was Petitioner's promise to pay the subordinate note when the "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." Such has occurred in this case as proven by the Secretary. Without evidence from Petitioner to refute the documentary evidence submitted by the Secretary, Petitioner's claim fails for lack of proof.

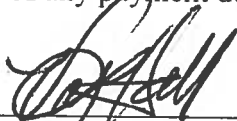
Fourth, Petitioner states that the debt due to HUD is unenforceable because repayment of the debt would cause Petitioner financial hardship. Petitioner states: "I have 2 daughters to support, ages 12, and 11. This is a real hardship, as it is, to go from gainfully employed, all of my adult life, to being disabled for a lifetime and my income reduced down to a third of what my teaching salary was monthly [sic]." (Pet'r Nov. Ltr.) This Office acknowledges Petitioner's financial circumstances, but the law provides that "unfortunately, in administrative offset cases evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable." *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005); *Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996); *Charles Lomax*, HUDBCA No. 87-2357-G679 (February 3, 1987). Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986). Thus, I find that financial hardship cannot be considered a defense in this case as the debt owed by Petitioner is sought to be collected by means of administrative offset.

Therefore, based upon the provisions set forth in the Subordinate Note that Petitioner signed on February 17, 2004, I find that Petitioner remains legally obligated to pay the alleged debt and that the Secretary is authorized to recover the debt by means of administrative offset.

#### **ORDER**

For the reasons set forth above, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset is **VACATED**. It is hereby

**ORDERED** that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any payment due Petitioner.

  
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Vanessa L. Hall  
Administrative Judge

June 18, 2010