



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

In the Matter of:

Donald Clear,

Petitioner

HUDOA No. 10-H-CH-LL103
Claim No. 7-800640820A

Donald Clear
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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.

On February 23, 2010, 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 February 23, 2010 until the issuance of a written decision by the administrative judge. *See* 24 C.F.R. § 17.156.

Background

On July 20, 1996, Petitioner executed a Note in the amount of \$25,000.00 under the provisions of the Title I insurance program. (Secretary's Statement ("Sec'y Stat."), filed June 8, 2010, ¶ 1, Ex. 1, Note, p.1) Petitioner defaulted on the Note and the Note was assigned to the Secretary pursuant to the provisions of the Title I insurance program. (*Id.*, Ex. 1, p. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), filed June 8, 2010, ¶ 3.)

HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (*Id.* at ¶ 3, Ex. 2, Dillon Decl., ¶ 4.) 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) \$24,467.92 as the unpaid principal balance as of March 31, 2010;
- (b) \$14,415.10 as the unpaid interest on the principal balance at 5% per annum through March 31, 2010; and
- (c) interest on said principal balance from April 1, 2010 at 5% per annum until paid.

(Dillon Decl., ¶ 4.) A Notice of Intent to Collect by Treasury Offset dated January 27, 2010 was sent to Petitioner. (*Id.* at ¶ 5.)

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 does not deny the existence or delinquency of the debt that is the subject of this proceeding. But, Petitioner contends: "I was imprisoned in the year 2000. When, I was released in 2005[,] I was notified in late 2005 or early 2006 by HUD stating that I had a loan that went in foreclosure." (Letter from Petitioner, "Pet'r. Ltr.," filed May 25, 2010.) Petitioner did not, however, provide documentary evidence to show that he was released from his legal obligation to pay the subject debt because the loan went into foreclosure. Even had Petitioner presented such evidence, he would still be required to prove further that the proceeds from the foreclosure were applied towards the payment of the subject debt. This Office has consistently maintained that "[i]n order for Petitioners to be released of liability, the proceeds [from a foreclosure sale] must have been sufficient to satisfy both [junior and senior liens], plus any reasonable expenses associated with the foreclosure sale. Absent a showing that the proceeds equaled or exceeded this amount, Petitioners remain personally liable for payment of the debt." *In re Lula G. Robertson and Gloria Stewart*, HUDBCA No. 88-2939-H457 (Apr. 12, 1998); *See also John Bilotta*, HUDBCA No. 99-A-CH-Y258, dated December 29, 1999 (the Secretary is entitled to separately enforce the debt against Petitioner under the assigned note); and *Kimberly S. (King) Thede*, HUDBCA No. 89-4587-L74 (April 23, 1990) *citing Alan Juel*, HUDBCA No. 87-2065-G396

(January 28, 1986) (If satisfaction of a senior deed of trust through a foreclosure sale 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.)

Therefore, consistent with *Lula G. Robertson, Bilotta, Thede, and Juel*, Petitioner must submit, in this case, documentary evidence to prove that either Norwest Home Improvement, Inc., (formerly Statewide Mortgage Company) or HUD, as the junior lien holder, received proceeds from the foreclosure sale that were sufficient to satisfy both the senior and junior liens. Petitioner failed to submit such evidence in this case. Accordingly, this Office finds that due to Petitioner's lack of proof that the proceeds from the foreclosure paid off the subject debt, Petitioner remains legally obligated to HUD for the debt that is the subject of this proceeding.

Petitioner also contends "I did not borrow 38,577.14, so I'm disputing all principal and interest." (Petitioner's Request for Hearing "Hrg. Req.," filed February 23, 2010.) Petitioner further contends that "I have been in contact with HUD. I have tried to settle with the HUD department. However, they refused my settlement. I am appealing because, I think it is unfair to hold me responsible for the loan, the interest and penalties that have accrued over the years." (Pet'r. Ltr.) While Petitioner maintains that the accrual of interest and penalties over the years is unfair, this Office has always maintained that Petitioner's ignorance of the lawful interest applied to the outstanding principal will not relieve Petitioner of his obligation to pay the principal due and any interest that has accrued. See *Donna C. Birch*, HUDOA No. 10-H-NY-LL26, at 3 (July 22, 2010) (citing *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052, at 4 (June 15, 2005)). "When the principal balance is valid and legally enforceable, so too is the interest that attaches to it." *Thomas R. Herrin*, HUDBCA No. 88-2848H372, at 2 (December 9, 1987). Petitioner has failed to submit any evidence to prove that the interest attached to the debt that is the subject of this proceeding is invalid. Thus, consistent with *Birch, Joyner* and *Herrin*, I find that Petitioner's debt and accrued interest in this case is valid and legally enforceable.

Finally, Petitioner contends: "I am hoping to erase this debt. I am trying to reestablish myself in society and purchase another house. The HUD authority is preventing me from purchasing another home. There is not a bank that will lend to me until this matter is cleared up. I have only \$5,000 upfront and I can make \$3,000 in monthly installments provided this will stop all garnishments and tax levies against me." (Pet'r. Ltr.) Although this Office acknowledges Petitioner's financial circumstances, 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). Furthermore, no regulation or statute currently exists that permits financial hardship to be considered as a basis for determining whether a debt is past-due and enforceable in cases involving debt collection by means of administrative offset. Thus, consistent with case law precedent and statutory limitations, I find that financial hardship cannot be considered as a defense in this case as the debt owed by Petitioner is sought to be collected by means of administrative offset.

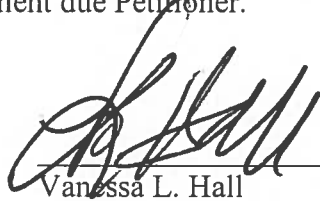
While this Office is not authorized to extend, recommend, or accept any payment plan, or consider any settlement offer on behalf of HUD, Petitioner may wish to discuss this matter with either Counsel for the Secretary, or submit a HUD Office Title I Financial Statement (HUD Form 56142) to Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

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.



Vanessa L. Hall
Administrative Judge

August 25, 2010