



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

In the Matter of:

JANICE PALMER,

Petitioner

HUDOA No. 10-H-CH-LL116
Claim No. 78-018915-2

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For Respondent

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For the Secretary

DECISION AND ORDER

Petitioner was notified, pursuant to 31 U.S.C. §§ 3716 and 3720A, that the Secretary of the U.S. Department of Housing and Urban Development 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 Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b). 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, this Office temporarily stayed referral of the debt to the U.S. Department of Treasury for offset on March 30, 2010. (Notice of Docketing, Order, and Stay of Referral, issued March 30, 2010.)

Background

A Note dated May 21, 1997 was signed by Petitioner securing a loan in the amount of \$25,000.00. (Secretary's Statement ("Sec'y Stat."), filed October 20, 2010, ¶ 8(K). The loan was funded on June 12, 1997 and Petitioner made twenty payments on the Note before defaulting on March 14, 1999. (*Id.* at ¶ 8(L) and Ex. M, Declaration of Brian Dillon ("Dillon Decl."), dated May 21, 2010, ¶ 3.) After Petitioner defaulted on the loan, the Note was assigned to HUD by The Money Store under regulations governing the Title I Insurance Program. (Dillon Decl. ¶ 3.)

HUD has attempted to collect on the Note from Petitioner but has not been successful. (Sec'y Stat. ¶ 10; Dillon Decl. ¶ 4.) The Secretary has filed a statement alleging that Petitioner is justly indebted to HUD in the following amounts:

- (a) \$24,299.24 as the unpaid principal balance as of April 30, 2010;
- (b) \$14,131.77 as the unpaid principal balance at 5% per annum through April 30, 2010; and
- (c) interest on said principal balance from May 1, 2010 at 5% per annum until paid.

(Sec'y Stat. ¶ 11; Dillon Decl. ¶ 4.)

A Notice of Intent to Collect by Treasury Offset dated February 22, 2010, was sent to Petitioner. (Sec'y Stat. ¶ 9; Dillon Decl. ¶ 5; Declaration of Janice Palmer, Petitioner ("Pet'r's Decl."), dated April 21, 2010, ¶ 5.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A provides federal agencies with the remedy of administrative offset of federal payments for the collection of debts owed to the United States Government. In administrative offset cases, 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 contends that the debt as claimed by the Secretary does not exist and is unenforceable because: (1) the Note does not contain her true signature; and, (2) she did not have knowledge of any HUD loan prior to receiving the Notice of Intent.

Petitioner, through counsel, first claims that the Note does not contain her true signature. Petitioner states that, "I reviewed the notice and deny having any financing in February 1997...the Note dated February 21, 1997 does not contain my signature, nor does the Addendum to the Note." (Petitioner's Declaration, "Pet'r's Decl.," ¶ 6, filed April 26, 2010.) In support of her argument Petitioner submitted a copy of her driver's license, social security card, handwriting exemplar, and a Deed of Trust dated April 29, 1997, all of which she claims contain her true signature and initials. (Pet'r's Decl. Attachs.) Upon reviewing the documentary evidence submitted by Petitioner, it was found to be insufficient as proof of Petitioner's claim that the signature reflected on the Note was not authentic, or true. On August 17, 2010

Petitioner was ordered to provide evidence that would sufficiently support Petitioner's allegations of forgery. (Order, dated August 17, 2010, p. 1.) Petitioner was specifically ordered to provide:

- copies of any police report or other proof that Petitioner reported the alleged forgery involved in this case to law enforcement authorities or to the lender;
- expert analysis and written opinion of Petitioner's handwriting and the disputed signature on the loan agreement;
- copies of any complaint or civil actions filed in a court by Petitioner involving the alleged forgery of his name on the HUD note that is the subject of this proceeding;
- a copy of the entire promissory note allegedly signed by Petitioner.

(Id.)

However, Petitioner failed to comply with the Order.

The Secretary contends, on the other hand, that there is no basis for Petitioner's allegation that the signature on the Note alleged to be dated February 21, 1997 is not her true signature. The Secretary states that the debt in this case arose from a Note dated May 21, 1997 that was signed by Petitioner. (Sec'y Stat. ¶ 8(K).) While the record indicates that on March 8, 2010 HUD received a letter from Petitioner's counsel that Petitioner was a victim of fraud, HUD, in response to the letter, provided Petitioner's counsel with a copy of HUD's records containing Petitioner's alleged signature for the Note dated May 21, 1997. (Dillon Decl. ¶ 6.) The Secretary also produced, for this Office, additional copies of documents associated with the debt that is the subject of this proceeding: 1) the Note that was signed by Petitioner and dated May 21, 1997, along with a Notary attesting to the authenticity of Petitioner's signature; 2) the Notice of HUD's Role in Title I Loans, the Deed of Trust, and the Truth in Lending Statement, all dated May 30, 1997 and signed by Petitioner; and, 3) the Home Improvement Loan Inspection Extension Request Form, dated October 24, 1997, that also was signed by Petitioner. (Sec'y Stat., ¶ 13, Attachments.) The signatures on these documents remain unrefuted and un rebutted by Petitioner. Even though Petitioner challenges the authenticity of the signature on a Note dated February 21, 1997, there is no record of Petitioner claiming that the signature on the Note dated May 21, 1997 was unauthorized, or forged, or lacked authenticity. In fact, upon a further examination of the record in its entirety, there is no evidence that the February 21, 1997 Note challenged by Petitioner is even a part of the record in this proceeding.

After reviewing the record further, it remains unrefuted that the address of the property at 5670 West Olympic, #PH4, Los Angeles, California 90036 is the property Petitioner admits to purchasing and also is the address reflected on the face of the Note and the Deed of Trust, both dated May 21, 1997, and both signed by Petitioner. (*See* Petitioner's Decl., ¶ 3., Attach.) Petitioner also admits that she "obtained a loan in the amount of \$143,600.00 with Republic Consumer Lending Group, Inc." for the same property, and further admits that "*I signed all the necessary loan documents.*" (emphasis added.) (Petitioner's Decl., ¶ 4.) There is no other debt in dispute in this proceeding other than the debt associated with the loan documents Petitioner already obtained and signed for 5670 West Olympic, #PH4, Los Angeles, California 90036. None of these documents were dated February 21, 1997. Thus, it is inconsistent for Petitioner,

who has already admitted to signing the Note at issue, to now claim that the signature on the same Note is not her true signature.

For a Petitioner to prove that a signature is untrue, unauthorized, or forged, this Office must determine whether the evidence submitted by Petitioner is sufficient to meet Petitioner's burden of proof to establish such a claim. Administrative judges are not handwriting experts, and thus, must depend on the scientific testimony of experts in order to find that a forgery has occurred. *See In the Matter of Lawrence Syrovatka*, HUDOA No. 07-A-CH-HH10 (November 18, 2008). Petitioner was ordered to submit the necessary documentation to prove her claim but has failed to establish, by a preponderance of the evidence, that the signature on the May 21, 1997 Note is not true. (See Order, dated August 17, 2010.) However, the Secretary has met his initial burden of proof that the debt that is the subject of this proceeding remains due by Petitioner and arose from the May 21, 1997 Note bearing Petitioner's signature. (Sec'y Stat., ¶ 13, Attachments.)

Without evidence from Petitioner to rebut or refute the evidence submitted by the Secretary, Petitioner remains legally obligated to pay the subject debt because she has failed to meet her burden of proof. This Office has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable." *Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing, *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). As a result, pursuant to 24 C.F.R. § 26.4(c), I find that Petitioner's claim fails for lack of proof and the Note dated May 21, 1997 remains legally binding for Petitioner.

Next, Petitioner contends that she did not have knowledge of any HUD loan prior to receiving the Notice of Intent. Petitioner claims, "In February 2010, I received a Notice of Intent to Collect from HUD. Prior to this I had no knowledge of any HUD loan or any other loan." (Petitioner's Decl., ¶ 5.) However, Petitioner has not sufficiently persuaded this Office that she was unaware of the existence of the HUD loan prior to receiving the Notice of Intent beyond her allegation. The Secretary has provided, as evidence, a notarized copy of the "Notice of HUD's Role in Title I Loans" ("Notice of HUD's Role") that Petitioner agreed to and admitted signing. (Petitioner's Decl., ¶ 4; Sec'y Stat., ¶ 13, Attach Notice, dated May 30, 1997.) The Notice of HUD's Role provides:

IF YOU DO NOT REPAY THE LOAN AS AGREED, the lending institution may declare all unpaid amounts immediately due and payable, with interest, and may then assign the loan to HUD in exchange for Title I benefits. *When the loan is assigned to HUD you will be subject to HUD collection activities, which include, but will not be limited to (1) notifying the Internal Revenue Service (the amount due HUD under the assigned Note can be treated as income to you if you do not pay it), (2) reporting the default to credit reporting agencies, and (3) possible foreclosure and loss of your home.*

(emphasis added.) (Id.)

Petitioner was given the Notice of HUD's Role and agreed to be subject to HUD's collection activities when the loan was assigned to HUD which, in this case, occurred after Petitioner defaulted on March 14, 1999.

Additionally, the Notice of HUD's Role was sealed by a notary public. In California, the notarized signature of Petitioner on the Notice of HUD's Role gave rise to the presumption that the signature was authentic. *See* Cal. Evid. Code § 1451¹. *See also* *Butler v. Encyclopedia Britannica, Inc.*, 41 F.3d 285, 294-95 ("A notary public's certificate of acknowledgment, regular on its face, carries a strong presumption of validity."). As a result, the Notice of HUD's Role that Petitioner admitted to signing is presumed to be valid and, as such, Petitioner remains legally bound by the terms and conditions in the Notice of HUD's Role. Beyond Petitioner's uncorroborated allegation that she did not receive notice of the loan prior to receiving the Notice of Intent, Petitioner has failed to provide any credible evidence to substantiate her allegation, so accordingly her claim fails for lack of proof.

ORDER

For the reasons set forth above, I find that the debt that 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 federal payment due Petitioner.



Vanessa L. Hall
Administrative Judge

April 6, 2011

¹ Cal. Evid. Code § 1451 provides: A certificate of the acknowledgment of a writing other than a will, or a certificate of the proof of such a writing, is prima facie evidence of the facts recited in the certificate and the genuineness of the signature of each person by whom the writing purports to have been signed if the certificate meets the requirements of Article 3 (commencing with Section 1180) of Chapter 4, Title 4, Part 4, Division 2 of the Civil Code.