



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

In the Matter of:

Tamera L. Davis,

Petitioner

HUDOA No. 10-H-CH-LL126
Claim No. 7-807024670B

Tamera L. Davis
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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 April 16, 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. *See* 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 April 20, 2010 until the issuance of a written decision by the administrative judge. *See* 24 C.F.R. § 17.156.

Background

The nature of the debt is a manufactured home retail installment sales contract security agreement and manufactured home transfer of equity agreement and disclosure statement. (Secretary's Statement ("Sec'y Stat."), filed July 2, 2010, ¶ 1, Ex. #1.; Ex. #2, Declaration of Kathleen Porter, ("Porter Decl."), Acting Director, Asset Recovery Division, Financial Operations Center of HUD, ¶ 3.) After default by Petitioner, the Notes were assigned to the Secretary by Green Tree Servicing Corporation, under the regulations governing the Title I Insurance Program. (*Id.*, Porter Decl., ¶ 3.)

HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (*Id.* at ¶ 2, Ex. #2, Porter 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) \$3,669.55 as the unpaid principal balance as of April 30, 2010;
- (b) \$808.57 as the unpaid interest on the principal balance at 5% per annum through April 30, 2010; and
- (c) \$690.47 as the unpaid penalties and administrative costs as of April 30, 2010.
- (d) interest on said principal balance from May 1, 2010, at 5% per annum until paid.

(*Id.* at ¶ 3, Porter Decl., ¶ 4.) A Notice of Intent to Collect by Treasury Offset dated March 29, 2010 was sent to Petitioner. (*Id.* at ¶ 8, Ex. 2, Porter Decl., ¶ 8.) A copy of the Notice of Default and Right to Cure Default dated September 24, 2007 was sent to Petitioner from Green Tree Servicing LLC. (Sec'y Stat., Ex. 2, Porter Decl., ¶ 5, Ex. B.) The Post Office attempted to contact Petitioner by certified mail on three different dates, 9/27/07, 10/02/07, and 10/15/07, but the mail remained unclaimed. (Sec'y Stat., ¶ 5, Ex. B.) In response to Petitioner's request on February 17, 2010, a copy of the supporting loan documentation was forwarded to Petitioner's counsel on February 22, 2010. (*Id.* at ¶ 5, Ex. 2, Porter Decl., ¶ 5, Ex. A.)

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 first asserts that she was **never** made aware of this claim. She specifically alleges:

I am writing this letter reference HUDOA No. 10-H-CH-LL12 Claim No 7-807024670B. I am requesting information on what this is for. I was **never** made aware by anyone (Greentree, ex-husband, etc.) that the mobile home I once shared with Robert C. Voirin was being repossessed.

(emphasis added.) (Petitioner's Letter, ("Pet'r Ltr.") dated June 28, 2010.)

However, Petitioner was issued a Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing") on April 20, 2010 in which Petitioner was informed that:

Documents relating to this alleged debt are not in the possession of this Office. Petitioner may request copies of these documents by writing to: Kim McManus, U.S. Department of Housing and Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY 12203.

Therefore, I find that Petitioner has already been instructed on how to obtain documents related to the subject debt, and as such, shall be considered to have been properly informed.

Secondly, Petitioner claimed Robert [Petitioner's spouse] was awarded the mobile home in the divorce settlement, and given a year to have it refinanced [and] to have my name removed, but he was never able to due to his terrible credit. I am not the one who is in default." (Pet'r Ltr.) As support, Petitioner submitted a copy of her divorce decree to establish that her divorce from her spouse was final and to prove that her spouse was solely responsible for the debt that is the subject of this proceeding. Beyond Petitioner's submission of a copy of the divorce decree that did not release Petitioner from her legal obligation to pay the alleged debt, Petitioner was ordered twice to submit documentary evidence that would otherwise render the alleged debt unenforceable. (Notice of Docketing; Order, dated May 20, 2010.)

This Office has previously held that co-signers of a loan are jointly and severally liable to the obligation, and as a result, "a creditor may sue the parties to such obligation separately or together." *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). As such, "the Secretary may proceed against any co-signer for the full amount of the debt" because each co-signer is jointly and severally liable for the obligation. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Additionally, the Secretary's right to collect the alleged debt in this case emanates from the terms of the Note. *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the subject debt, she must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

In the instant case, Petitioner has failed to produce evidence of a written release from her obligation to pay the alleged debt or evidence of valuable consideration paid to HUD in satisfaction of the debt, thus rendering the alleged debt unenforceable. While the Petitioner may be divorced from her ex-spouse, neither the Secretary nor the lender was a party to the divorce action. So as a recourse, Petitioner may seek to enforce, in the state or local court, the divorce

decree that was granted against her ex-husband so that Petitioner may recover from her ex-spouse monies paid to HUD by her in order to satisfy this legal obligation. *See Michael York, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3.* I find, therefore, without proof of a written release, Petitioner remains legally obligated to pay the subject debt as a co-signor on the Note.

As a final point, Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including a *determination against a noncomplying party*. (emphasis added).

Accordingly, because Petitioner has also failed to comply with any of the Orders issued by this Office, I find that Petitioner's non-compliance to the Orders issued by this Office provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

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**.

The Secretary is hereby authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any federal payment due Petitioner. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset to the extent authorized by law.



Vanessa E. Hall
Administrative Judge

October 7, 2010