



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

In the Matter of:

Israel Burgos,

Petitioner

HUDOA No. 10-H-CH-LL131
Claim No. 7-711131120A

Israel Burgos
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Pro se

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For the Secretary

ORDER OF DISMISSAL

In 24 C.F.R. § 17.152(b) it provides that failure by the Petitioner to submit evidence within 65 calendar days from the date of the Department's Notice of Intent, will result in a dismissal of Petitioner's request for review by the HUD Office of Appeals. Petitioner first alleges:

According to the court divorce papers, the judge order that my ex wife and me have to paid [sic] 50% the amount owed to HUD, and I'm enclosing a copy of the divorce papers (see the highlighter [sic] section on page 2 of the court order) for your files.

(Petitioner's Request for Hearing ("Pet'r H'rg. Req."), dated April 19, 2010.)

As support, Petitioner submitted a copy of his divorce decree to establish that his divorce from his spouse was final and to prove that his spouse was equally 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 his legal obligation to pay the alleged debt, Petitioner was ordered three times to submit documentary evidence that would otherwise render the alleged

debt unenforceable. (Order, dated June 3, 2010; Order, dated July 23, 2010; Order to Show Cause, dated September 2, 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, he 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 him from his 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 his obligation to pay the alleged debt or evidence of valuable consideration paid to HUD in satisfaction of the debt to otherwise prove that the alleged debt is unenforceable. While the Petitioner may be divorced from his 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 his ex-wife so that Petitioner may recover from his ex-spouse monies paid to HUD by him 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.

Second, Petitioner claims financial hardship by alleging “I also want you to know that I’m disable [sic]. I can not work, therefore I can not make any payments at this moment.” (Pet’r H’rg. Req.) While 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 exist 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.

Third, Petitioner claims she never received documents related to the alleged debt. More specifically, Petitioner states "I also would like to request copies of my account and if possible to do an audit to make sure that all the moneys [sic] withheld from us are been [sic] properly credited to our account." (Pet'r H'rg. Req.) Upon review of the record, 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.


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.

Upon due consideration of Petitioner's failure to comply with 24 C.F.R. § 17.152(b) and Rule 26.3 of Title 24 of the Code of Federal Regulations, Petitioner's appeal is **DISMISSED** *sua sponte*. It is hereby

ORDERED that this matter be **DISMISSED WITH PREJUDICE**.



Vanessa L. Hall
Administrative Judge

September 30, 2010