



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

In the Matter of:

E-Executive Realty,

Petitioner

HUDOA No. 10-H-CH-LL136
Claim No. 7-212000650A

Larry Taylor, Broker
E-Executive Realty, Inc.
13706 Research Boulevard #103
Austin, TX 78750

Pro se

Sara Mooney, Esq.
U.S. Department of Housing and
Urban Development
Office of Regional Counsel
for Southwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

RULING ON SECRETARY'S MOTION TO DISMISS

Petitioner was notified by a Due of Process Notice, pursuant to 31 U.S.C. §§ 3716 and 3720A, that the Secretary of the U.S. Department of Housing and Urban Development ("HUD") intended to seek administrative offset by the United States Department of the Treasury of any Federal payments due to Petitioner to recover a claimed past-due, legally enforceable debt of Petitioner to HUD.

On May 11, 2010, Petitioner filed a timely request to present evidence that the debt was not past-due or not legally enforceable. Pursuant to 24 C.F.R. § 17.150 et. seq. and § 20.4(b), the administrative judges of the HUD Office of Appeals are authorized to determine whether these debts are past due and legally enforceable. As a result of Petitioner's request, referral of the debt to the U.S. Department of the Treasury was temporarily stayed by this Office on May 13, 2010.

On September 30, 2010, a Motion to Dismiss was filed on behalf of the Secretary advising this Office:

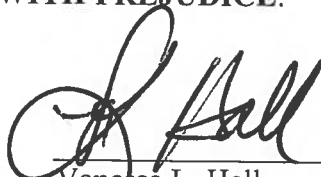
- 1) that Petitioner is a real estate broker licensed in the State of Texas;
- 2) that Petitioner, with HUD's full consent and knowledge, allowed another real estate broker to submit an offer to purchase a HUD-owned property on behalf of that broker's client;
- 3) that, as part of the formation of the real estate contract, the person who submitted an offer to purchase this property never submitted the earnest money that HUD required;
- 4) that, since the earnest money was never deposited with any broker, a contract was not formed because the condition precedent (depositing the earnest money) was never satisfied;
- 5) that, while HUD's contractor determined that the "contract was cancelled" because earnest money was not deposited, that determination was incorrect because a valid contract between HUD and the person submitting the offer to purchase was never established. Consequently, the correct determination by HUD's contractor should have been that the "offer to purchase was rejected" for failure to submit the required earnest money deposit. (Exhibit A)
- 6) that, since there was no underlying contract, no debt is owed to the Secretary; and
- 7) that, since no debt is owed to the Secretary, the issue with respect to the appropriateness of HUD attempting to collect the earnest money from the real estate broker as opposed to the person that submitted the offer to purchase the HUD home does not need to be addressed.

(Secretary's Statement, dated September 30, 2010.)

Upon due consideration, the Secretary's Motion to Dismiss is **GRANTED**. It is hereby

ORDERED that the Secretary shall not seek to collect the claimed debt of Petitioner by means of administrative offset of any Federal payment due Petitioner.

The stay of referral of this matter to the Department of the Treasury is hereby made permanent. This matter is **DISMISSED WITH PREJUDICE**.



Vanessa L. Hall
Administrative Judge

October 5, 2010