



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

In the Matter of:

**Cheryl Mosley,**

Petitioner

HUDOA No. 10-H-CH-LL148  
Claim No. 7-8001779-1

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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 June 22, 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 June 25, 2010 until the issuance of a written decision by the administrative judge. *See* 24 C.F.R. § 17.156.

## Background

The Secretary is the holder of a Manufactured Home Retail Installment Contract and Security Agreement (the "Note") signed by Petitioner. (Secretary's Statement ("Sec'y Stat."), filed September 23, 2010, ¶ 2; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated July 16, 2010, ¶ 3, Ex. A.) After default by Petitioner, the Note was assigned to HUD by Green Tree Financial Corporation under the regulations governing the Title I Insurance program. (Sec'y Stat., ¶ 2; Dillon Decl., ¶ 3, Ex. A.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 4; 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) \$15,439.42 as the unpaid principal balance as of June 30, 2010;
- (b) \$11,915.96 as the unpaid interest on the principal balance at 5% per annum through June 30, 2010;
- (c) \$0.00 as the unpaid penalties and administrative cost as of June 30, 2010;
- and
- (d) interest on the principal balance from July 1, 2010 at 5% per annum until paid.

(Sec'y Stat., ¶ 4; Dillon Decl., ¶ 4.) A Notice of Intent to Collect by Treasury Offset, dated January 27, 2010, was sent to Petitioner. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 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 argues that the subject debt is not legally enforceable against Petitioner because (1) the assignment of the Note to HUD was invalid; and (2) the collection of the debt is barred by a statute of limitations.

First, Petitioner argues that the assignment of the Note to HUD was invalid: "The note on which the alleged debt is based was to Green Tree Acceptance, Inc. . . . But the assignment to HUD was signed by Green Tree Financial Corporation. Absent some evidence that one name is an assumed name of the other, the assignment is invalid." Citing 31 CFR 284.11(e) (8) (i) Petitioner further argues that "The Secretary has the burden of going forward to prove the existence and the amount of the debt, and that "[u]nless the Secretary can produce evidence showing that the assignment from Green Tree Financial Corporation is somehow binding on

Green Tree Acceptance, Inc., this matter cannot go forward and must be dismissed.” (Petitioner’s Brief and Exhibits (“Pet’r Brief”), ¶ 1, filed August 12, 2010.)

In response, the Secretary asserts that “Green Tree Financial Corporation is the same entity as Green Tree Acceptance Corp.” As support, the Secretary filed a printout from the Michigan Department of Energy, Labor and Economic Growth’s on-line database for business records, showing that “the name of the [c]ompany was changed from Green Tree Acceptance, Inc. to Green Tree Financial Corp[oration].” (Sec’y Stat., ¶ 6, Dillon Decl., Ex. B.)

Petitioner’s assertion that the assignment of the Note to HUD was invalid due to the allegedly incorrect name lacks merit. Contrary to Petitioner’s position, in administrative offset cases it is Petitioner, and not the Secretary, who 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). The regulation section cited by Petitioner, “31 C.F.R. 284.11(e)(8)(i) generally applies to administrative wage garnishment cases, not cases involving administrative offsets such as the case with Petitioner. Petitioner has failed to meet her initial burden of proof, under 24 C.F.R. § 17.152(b), because she has failed to file documentary evidence that proves that the assignment from Green Tree Financial Corporation is not binding on Green Tree Acceptance, Inc. The Secretary, on the other hand, has provided documentary evidence proving that Green Tree Financial Corporation is the same entity as Green Tree Acceptance, Inc. Thus, I find that the assignment of the Note to HUD is valid, and as such Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

Second, Petitioner alleges that the collection of the debt is barred by a statute of limitations. Petitioner relies on 31 U.S.C. § 3716 in support of her proposition that a claim outstanding for more than 10 years may not be collected by means of administrative offset. (Pet’r Brief, ¶ 3.) Petitioner also relies on MCL [Michigan Compiled Laws] § 600.5807(8) as support for the proposition that the debt is subject to the six-year statute of limitations for contract actions in Michigan. (*Id* at ¶ 4.)

This Office has consistently recognized that while 31 U.S.C. §3716(e)(1) previously contained a ten-year statute of limitations, the statute was amended in 2008 to eliminate limitations period. *See Lucille Robinson*, HUDOA No. 10-H-CH-LL28, dated July 28, 2010, (citing *Angela Cortez*, HUDOA No. 09-M-CH-AWG102, dated July 20, 2009.) Additionally, the Supreme Court has held that no statute of limitations exists in administrative proceedings. *See B.P. America Prod. Co. v. Burton*, 127 S. Ct. 638 (2006).

In this case, the pertinent Federal statute applicable to collection of debts by administrative offset clearly provides that “[a]fter trying to collect a claim from a person under § 3711(a) of this title, the head of an executive . . . agency may collect the claim by administrative offset.” 31 U.S.C. § 3716(a) (2008). Furthermore, this statute provides that “[n]otwithstanding any other provision of law, regulation, or administrative limitation, no limitation on the period within which an offset may be initiated or taken pursuant to this section shall be effective.” 31 U.S.C. § 3716(e)(1) (2008). This means that there is no time limitation restricting the right of the Government to collect this debt by means of administrative offset. Therefore, consistent with statutory regulations and case law precedent, I find that the Secretary is not barred by statute of

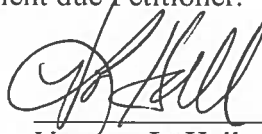
limitations from collecting the alleged debt by means of administrative offset, and that Petitioner remains legally obligated to pay the subject debt.

**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.



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Vanessa L. Hall  
Administrative Judge

January 6, 2011