



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

In the Matter of:

Timothy James Davis,

Petitioner

HUDOA No. 10-H-CH-LL156
Claim No. 7-210037920A

Timothy James Davis
7408 Southwind Court
Fort Worth, TX 76137

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 August 12, 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. 24 C.F.R. §§ 17.152, 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 August 12, 2010 until the issuance of a written decision by the administrative judge. 24 C.F.R. § 17.156.

Background

On November 16, 1998, Petitioner executed and delivered a Partial Claim Subordinate Note ("Note") payable to the order of the Secretary of Housing and Urban Development ("HUD") in the amount of \$9,216.00. (Secretary's Statement ("Sec'y Stat."), filed November 18, 2010, ¶ 2, Ex. A.) The Note was executed and delivered to evidence a loan that was made by HUD to Petitioner as a means of providing foreclosure relief by payment of arrearages on his primary FHA-insured mortgage. (*Id.* at ¶ 3, Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center, ("Dillon Decl."), ¶ 4). The Note provides that it becomes due on July 1, 2025 or earlier, when the first of the following events occurs: 1) When the Borrower has paid in full all amounts due under the primary note and related HUD-insured mortgage, or 2) The Maturity Date of the primary Note has been accelerated, or 3) The primary note and related mortgage are no longer insured by the Secretary, or 4) The purchaser does not occupy the property as his principal residence. (*Id.* at ¶ 3, Ex. A, Note, Section 4(A).) On or about December 16, 2002, the FHA Insurance on the first mortgage was terminated, as the mortgagee indicated that the mortgage was paid in full. (*Id.* at ¶ 5; Dillon Decl., ¶ 4).

The Secretary has made efforts to collect from the Petitioner; however the Petitioner remains delinquent. (Sec'y Stat., ¶ 6; Dillon Decl. ¶ 5.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD in the following amounts:

- (a) \$9,216.00 as the unpaid principal balance as of October 30, 2010;
- (b) \$1,359.36 as the unpaid interest on the principal balance at 4% per annum through October 30, 2010; and
- (c) interest on said principal balance from November 1, 2010 at 4% per annum until paid.

(Sec'y Stat., ¶ 6; Dillon Decl., ¶ 5.) A Notice of Intent to Collect by Treasury Offset, dated July 26, 2010, was sent to Petitioner. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 6.)

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 contends that the debt that is the subject of this proceeding is unenforceable because it was discharged as part of his Chapter 13 bankruptcy proceeding filed on January 17, 2006. As support, Petitioner later submitted a copy of a Notice of Hearing for Confirmation of Debtor's Final Chapter 13 Plan issued by the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division. (Petitioner's Documentary Evidence ("Pet'r's Evid."), filed October 22, 2010.) However, upon further examination of the evidence submitted by Petitioner it was found to be insufficient. Petitioner was then ordered specifically to submit "*the*

appropriate documents in compliance with the September 30, 2010 Order.” (emphasis added) (Order to Show Cause, (“Order SC”) dated November 23, 2010.) The September 30, 2010 Order had directed Petitioner “*to submit the schedule of creditors filed with the U.S. Bankruptcy Court which lists the subject debt to HUD or to the lending institution which made the HUD/FHA insured loan to Petitioner.*” (emphasis added) Petitioner failed to submit, as ordered, sufficient evidence in compliance with either the September 30, 2010 Order or the November 23, 2010 Order issued by this Office.

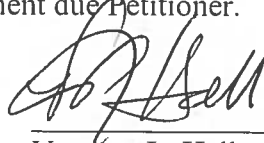
On the other hand, while the Secretary acknowledges that Petitioner filed for a Chapter 13 Bankruptcy, he contends that “The Department of Housing and Urban Development was not listed as a creditor in Petitioner’s Chapter 13 Bankruptcy filed in the Northern District of Texas, Case No. 05-43225.” (Sec’y Stat., ¶ 9; Dillon Decl., ¶ 8, Ex. A1). As support, the Secretary submits, for review, a copy of the list of scheduled creditors from the Petitioner’s Chapter 13 Bankruptcy proceeding. (Sec’y Stat., ¶ 12, Ex. E; Dillon Decl., ¶ 5.) An examination of the list of scheduled creditors provided by the Secretary supports the Secretary’s position that the Department of Housing and Urban Development, in fact, was not identified as a creditor discharged during Petitioner’s bankruptcy proceeding. A further examination of the record shows that, beyond the copy of the Notice of a Bankruptcy Hearing submitted by Petitioner, no further evidence exists that sufficiently supports Petitioner’s position. This Office has consistently maintained that “assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due or enforceable.” *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Accordingly, I find that Petitioner’s claim that the subject debt was discharged by bankruptcy must fail for lack of proof.

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.



Vanessa L. Hall
Administrative Judge

January 6, 2011