



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

In the Matter of:

Mary Noble,

Petitioner

HUDOA No. 10-H-CH-LL157
Claim No. 721003982

Mary Noble
4000 Spicebush Lane
Canal Winchester, OH 43110

Pro se

Amy Jo Conroy, Esq.
U.S. Department of Housing and
Urban Development
Office of Regional Counsel
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77 West Jackson Boulevard
Chicago, IL 60604

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 July 28, 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 August 19, 2010 until the issuance of a written decision by the administrative judge. *See* 24 C.F.R. § 17.156.

Background

On or about February 5, 2001, Petitioner executed and delivered to HUD a Partial Claims Promissory Note ("Subordinate Note") in the amount of \$3,576.30. (Secretary's Statement, filed November 12, 2010, ¶ 2, Ex. A, Note.) This Subordinate Note secured a partial claim paid on her behalf by the Secretary to pay the arrearages on her primary FHA-insured mortgage, and thereby avoided the foreclosure of her primary residence. (*Id.*) The Subordinate Note provides that the loan becomes due upon several conditions. (Sec'y Stat., ¶ 3.) Relevant in this case, the Subordinate Note became due when the borrower paid the primary note in full. (Sec'y Stat., ¶ 3, Ex. A., ¶ 3(A)(i). The Subordinate Note expressly states that payment shall be made at the Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street S.W., Washington, D.C. 20410. (*Id.* at ¶ 4., Ex. A, ¶ 3(B), Ex. B, Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, HUD Financial Operations Center ("Porter Decl."), dated August 27, 2010, ¶ 4.)

On or about November 28, 2001 the lender for the primary note reported to HUD that the FHA mortgage insurance on the original note and security instrument was terminated as the mortgage was paid in full, thus making the Subordinate Note due immediately. (Sec'y Stat., ¶ 5, Ex. B, Porter Decl., ¶ 4.) HUD has attempted to collect on the claim from Petitioner, but Petitioner remains delinquent. (Ex. B, Porter Decl., ¶ 5.) Petitioner is indebted to HUD on the claim in the following amounts:

- (a) \$3,364.81 as the unpaid principal balance as of July 31, 2010;
- (b) \$0.00 as the unpaid interest on the principal balance at 4% per annum through July 31, 2010; and
- (c) interest on said principal balance from August 1, 2010 at 4% per annum until paid.

(Sec'y Stat ¶ 7, Ex. B, Porter Decl., ¶ 5.) ON or about May 14, 2007 A Notice of Intent to Collect by Treasury Offset dated May 14, 2007 was sent to Petitioner. (Porter Decl., ¶ 6. Ex. B.) This offset was later stayed pursuant to this Office Order dated August 19, 2010. (Notice of Docketing, p.2).

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).

Here, Petitioner acknowledges that she owed the alleged debt, but claims that, due to financial hardship, she "really wanted debt forgiveness for this loan." (Petitioner's Hearing Request, ("Hr'g Req."), dated July 28, 2010.) Petitioner further acknowledges: "the original amount owed was about \$2400.00. I sold the house and totally forgot that [the] delinquent amount was still outstanding....The original debt is now more than \$4,000.00 and growing." (Hr'g Req.) As support for Petitioner's claim of financial hardship, she submitted copies of

proofs of payment for: rent, phone and cable bills, auto insurance, auto maintenance, food, medicine, and diabetic supplies. (Petitioner's Letter and Documentary Evidence, filed October 22, 2010, Attachments.)

While this Office acknowledges Petitioner's financial circumstances, no regulation or statute currently exists 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. Furthermore, case law precedent has maintained 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). Therefore, consistent with statutory limitations and case law precedent, 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.

With regard to Petitioner's request to seek forgiveness of the debt that is the subject of this proceeding, this Office is not authorized to extend, recommend, or accept any payment plan, or consider any settlement offer or forgiveness of debt on behalf of HUD. Petitioners may wish to further discuss this matter with either Counsel for the Secretary, or submit for consideration a HUD Office Title I Financial Statement (HUD Form 56142) to Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

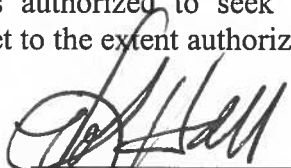
ORDER

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 L. Hall
Administrative Judge

January 21, 2011