



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

In the Matter of:

SUMMIE SHARP,
Petitioner

HUDOA No. 10-H-CH-LL160
Claim No. 7-710057710A

Summie Sharp
400 S. Front Street #9
Mart, TX 76664

Pro se

Alison Flowers, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
For Midwest Field Offices
77 West Jackson Boulevard, 26th Floor
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

Petitioner was notified, pursuant to 31 U.S.C. §§ 3716 and 3720A, that the Secretary of the U.S. Department of Housing and Urban Development 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.

Petitioner made a request for a hearing concerning the existence, amount, or enforceability of the debt allegedly owed to HUD. The Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b). 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 and 17.153. As a result of Petitioner's hearing request, this Office temporarily stayed referral of the debt to the U.S. Department of Treasury for offset on September 24, 2010. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), issued September 24, 2010.)

Background

Petitioner signed and entered into a FHA Title I Property Improvement Retail Installment Contract (“Note”) with Beauty Guard Homes of Waco on October 17, 1994. On December 30, 1994 the Note was assigned to HOME, Inc. (Secretary’s Statement (“Sec’y Stat.”), filed February 14, 2011, ¶ 2, Ex. B.) After default by Petitioner, the Note was assigned to HUD by City Mortgage Services, Servicing Agent for Coast Partners Acceptance Corporation under the regulations governing the Title I Insurance Program. (*Id.* at ¶ 3, Ex. B; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated October 7, 2010, ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$11,302.07 as the unpaid principal balance as of September 30, 2010;
- (b) \$8,335.47 as the unpaid interest on the principal balance at 5% per annum through September 30, 2010; and
- (c) interest on said principal balance from September 30, 2010 at 5% per annum until paid.

(Sec’y Stat. ¶ 4; Dillon Decl. ¶ 4.)

A Notice of Intent to Collect by Treasury Offset, dated May 17, 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 the remedy of administrative offset of federal payments for the collection of debts owed to the United States Government. The burden of proof is on the alleged debtor to show that the debt is unenforceable or not past due. 24 C.F.R. § 17.152(b). Failure to provide documentary evidence to meet this burden shall result in a dismissal of the debtor’s request for review. *Id.* Petitioner contends that the debt is unenforceable because: 1) the work on the property in this case was never completed; and, 2) Petitioner never got a response from HUD regarding an inspection report he mailed to HUD showing more repairs that had to be completed.

First, Petitioner “would like to obtain a review of HUD’s initial determination that the debt is past-due and legally enforceable.” (Petitioner’s Hearing Request (“Pet’r Hr’g Req.”), filed September 22, 2010.) Petitioner claims that the home repairs financed by the Note and conducted by a contractor sent by HUD were “supposed to take four to five months to complete,” but after three months of work the contractor left and never came back. (*Id.*) As a result, Petitioner states: “My home was never completed. . . . I do not believe I owe this debt and would like to have the \$29,000 that has been said I owe dropped.” (*Id.*)

The Secretary states, on the other hand, that the subject debt is past due and enforceable because the repair work on the property was completed. The Secretary also claims that, “There is no evidence in HUD’s claim file that a HUD employee spoke to Petitioner concerning the inspection or agreed to send an inspector. Petitioner further states that he hired his own inspector and sent the results to HUD, but there is no evidence of this submission.” (Sec’y Stat., ¶ 8; Dillon Decl. ¶¶ 8, 9.)

As support, the Secretary provides a copy of a Completion Certificate for Property Improvements (“Completion Certificate”), executed by Petitioner on December 30, 1994. (Sec’y Stat., ¶ 8, Ex. G.). The language in the Completion Certificate states:

Notice to Borrowers: You must execute this certificate as a condition of loan approval. Do not sign this certificate until the dealer or contractor has satisfactorily completed the improvements in accordance with the terms of your contract or sales agreement.

(*Id.*)

Further, according to the Note also signed by Petitioner, the subject debt could not be collected until Petitioner certified that the home repair work had been completed. (Sec’y Stat., Ex. B., p.1.) When Petitioner signed the Completion Certificate in this case, he certified that “[t]he property improvements have been completed in general accordance with the contract or cost estimate and to my (our) satisfaction.” (*Id.*) The Secretary also provided a copy of a FHA Inspection Report, dated February 13, 1995, that indicates that an inspector interviewed Petitioner and concluded, from that interview, that “all improvements have been completed as listed.” (Sec’y Stat., ¶ 10, Ex. H.)

Previously, in *Jerry and Gayla Baker*, HUDBCA No. 04-D-CH-EE07 (March 23, 2005), this Office determined that, “the identical language in a Completion Certificate clearly reveal[ed] the importance and significance of this document, and by signing it, Petitioners acknowledged that the work had been completed in accordance with the contract and to their satisfaction.” The court also determined in *Gayla Baker* that, “Petitioners, having signed the Certificate of Completion, cannot now deny the work was originally satisfactorily completed.” *See also* Richardo Montelongo, HUDBCA No. 99-D-CH-Y264 (Feb. 29, 2000) (quoting Tammie and Donald Purcell, HUDBCA No. 97-B-SE-W227 (Mar. 17, 1998) (internal quotations omitted)). Consistent with *Gayla Baker*, Petitioner likewise cannot deny, at this stage, that the work in this case was satisfactorily completed since he signed a Certificate of Completion acknowledging that the work on the property was otherwise completed. Therefore, based upon the evidence presented, this Office must conclude that the home repair was completed to Petitioner’s satisfaction and that the debt in this case is past due and enforceable in the amount alleged by the Secretary.

As a final point, Petitioner claims that he never got a response from HUD regarding an inspection report he mailed to HUD showing more repairs that had to be completed. (Pet’r Hr’g. Req.) More specifically, Petitioner contends that when the contractor failed to return and an inspector promised by HUD failed to appear, he “hired an inspector who determined the work

was not finished, the house was not leveled[,] and the house was not liveable.” (*Id.*) Petitioner then claims that he:

[M]ailed the results of the inspection report to HUD. Nothing happened and after that I did nothing as I was not sure what else I [sic] there was I could do. The last time I called HUD and had the home inspected and sent them the results the lady told me not to make a payment until the inspection was done.

(*Id.*)

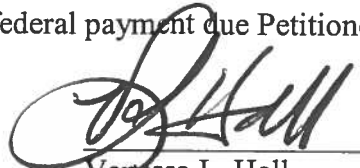
Petitioner adds that: “[A] witness [to the incomplete condition of the repairs] is the man who inspected the house. He said that he [inspector] understands the case and sides with Summie and Velma Sharp, but does not want to get involved in the case as he works for HUD and is afraid that it could affect his day.” (Petitioner’s Second Letter, filed November 12, 2010.) As evidence, Petitioner provides contact information for a person who also “was receiving HUD to help with her house and had the same people working on her home at the time [Petitioner] was.” (*Id.*) Petitioner characterizes this person as “a witness as to how the work on [Petitioner’s] house was never completed.” (*Id.*) However, to date, Petitioner has failed to provide the results of the inspection report, statements or documentary evidence from either of the witnesses referenced, or any other credible and relevant evidence to rebut or refute the evidence presented by the Secretary. Therefore, this claim lacks merit, and as such, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

ORDER

For the reasons set forth above, I find the debt that 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 federal payment due Petitioner.



Vanessa L. Hall
Administrative Judge

April 25, 2011