



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

In the Matter of:

**Clarence Giles,**

Petitioner

HUDOA No. 10-H-CH-LL20  
Claim No. 7-711404610A

Clarence Giles  
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Houston, TX 77020

Pro se

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For the Secretary

**RULING ON SECRETARY'S MOTION TO DISMISS AND ALLOW OFFSET**

Petitioner was notified by a Notice of Intent 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 continue collecting this debt by offset by the United States Department of the Treasury of certain Federal payments due to Petitioner to recover a past due, legally enforceable debt claimed by HUD against Petitioner.

Petitioner filed a timely request to present evidence that the debt was not past due and was not his debt, and thus not legally enforceable. Pursuant to 24 C.F.R. § § 17.150-17.170 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 U.S. Department of the Treasury was temporarily stayed by this Office on February 19, 2010.

On February 26, 2010, a Motion to Dismiss ("Dismissal #1") was filed on behalf of the Secretary stating that:

Petitioner's claim that he does not owe the debt has already been adjudicated by the Office of Appeals and a decision in favor of the Secretary was entered on August 1, 2000. As such, Petitioner is not, entitled to another hearing on the same issue and the doctrine of

res judicata applies because the present claim is identical to the first claim, the parties are the same and a decision was rendered on the merits.

(Dismissal #1, ¶ 2).

As support, the Secretary provided a copy of the decision, *Clarence H. Giles*, HUDBCA No. 99-D-CH-Y304, dated August 1, 2000 (“Clarence Giles 2000”), along with supporting documentation for consideration (Motion to Dismiss, Attach.). “Under Texas law ‘the doctrine of res judicata precludes subsequent relitigation by the same parties of a question of law or issue of fact which have been determined by a court of competent jurisdiction.’” *Coastal States Marketing, Inc. v. Hunt*, 694 F.2d 1358 (5<sup>th</sup> Cir. (Tex.) January 14, 1983) (citing *E.D. Systems*, 674 F.2d at 457.) Further, “under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.” (*Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, n. 5 (1979)).

Based upon a review of the prior Clarence Giles 2000 decision, and the court records available, there is sufficient proof that the issues, claim numbers, identity of the parties, amounts of unpaid principal balance, and the dates of the loan in the prior Clarence Giles 2000 decision are identical to those involved in the instant case. Consequently, I find, consistent with *Coastal states* and *Parklane*, that the doctrine of res judicata applies in this case because the issue of whether Petitioner owes the debt that is the subject of this proceeding has already been adjudicated.

Additionally a similar issue was raised in another case that parallels the facts involved in the instant case. In the case of *Clare Giles*, HUDOA 10-H-CH-LL30 (March 10, 2010), the Government filed a Motion to Dismiss and Allow Offset (“Dismissal #2”) on the grounds that the doctrine of res judicata applies because “the Office of Appeals has already ruled in favor of the Secretary and the present claim is identical to the claim that was heard in Petitioner’s first hearing, that the parties are the same as in the first hearing and that the original ruling was on the merits of the case.” (Dismissal #2, ¶ 2.) That Motion was denied on the grounds that the evidence presented by the Government was insufficient and failed to persuade the Court that the claims or parties in both proceedings were the same.

In the instant case, unlike in *Clare Giles*, the Government provided sufficient evidence to prove that the same parties, issues of fact, and relevant claims that existed in the prior *Clarence Giles* 2000 decision also existed in the instant case. As such, I find that since the subject of this proceeding has already been adjudicated, the doctrine of res judicata is applicable in this case.

As a final point, 24 C.F.R. § 17.152(d) provides:

(d) *Previous decision by Board of Contract Appeals.* The debtor is not entitled to a review of the Department’s intent to offset it, if, in a previous year the HUD Board of Contract Appeals has issued a decision on the merits that the debt is past due and legally enforceable *except* when the debt has become legally unenforceable since the issuance of that decision, or the debtor can submit newly discovered material evidence that the debt is presently not enforceable.


(emphasis in original.)

On March 30, 2010, this Office issued an Order to Show Cause to Petitioner to address “why his request for hearing filed in this case should not be dismissed, and why the decision and Order of Judge Drummond, . . . should not be given *res judicata* effect.” (emphasis in original.) To date, Petitioner has failed to comply with the provisions of that Order by failing to provide evidence that the subject debt has become legally unenforceable or proof of newly discovered material evidence that the debt is unenforceable.

Therefore, upon due consideration, the Secretary’s Motion to Dismiss and Allow Offset is **GRANTED**. It is hereby

**ORDERED** that the Secretary shall seek to collect this debt by means of administrative offset of any Federal payments due to Petitioner because the debt is enforceable. The stay of referral of this matter to the U.S. Department of the Treasury is **VACATED**.

This matter is **DISMISSED WITHOUT PREJUDICE**.

  
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Vanessa L. Hall  
Administrative Judge

April 23, 2010