



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

In the Matter of:

**Lucille Robinson,**

Petitioner

HUDOA No. 10-H-CH-LL28

Claim No. 7-800670510B

Katherine C. Wilson, Esq.  
P.O. Box 2848  
Batesville, AR 72503

For Petitioner

Sara Mooney, Esq.  
U.S. Department of Housing and  
Urban Development  
Office of Regional Counsel  
for Midwest Field Offices  
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.

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 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 February 23, 2010 until the issuance of a written decision by the administrative judge. 24 C.F.R. § 17.156.

## **Background**

On December 5, 1991, Petitioner executed a Retail Installment Contract and Security Agreement ("Note") in the amount of \$14,500.00. (Secretary's Statement ("Sec'y Stat."), filed April 28, 2010, ¶ 1, Ex. 1.) After default by Petitioner, the Note was assigned to the Secretary pursuant to the provisions of the Title I insurance program. (*Id.*, Ex. 1, Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated March 4, 2010, ¶ 3.)

HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (*Id.* at ¶ 2, Ex. 2, 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) \$9,383.97 as the unpaid principal balance as of February 28, 2010;
- (b) \$4,122.80 as the unpaid interest on the principal balance at 5% per annum through February 28, 2010; and
- (c) interest on the principal balance from March 1, 2010 at 5% per annum until paid.

(*Id.* at ¶ 6, Dillon Decl., ¶ 5.) A Notice of Intent to Collect by Treasury Offset dated January 27, 2010, was sent to Petitioner. (*Id.* at ¶ 3, Ex. 2, Dillon Decl., ¶ 5.) Pursuant to Petitioner's request on February 17, 2010, a copy of the supporting loan documentation was forwarded to Petitioner's counsel on February 22, 2010. (*Id.* at ¶ 5, Ex. 2, Dillon Decl., ¶ 6, Ex. A.)

## **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 asserts that the debt is not legally enforceable because a ten-year delay in seeking to pursue collection of this debt raises questions regarding its enforceability. (Petitioner's Request for Hearing ("Pet'r Hrg. Req."), ¶ 1, filed February 17, 2010.) In particular, Petitioner states the following:

The applicable statute of limitations is Arkansas Code of Annotated 16-56-111, pursuant to which, a cause of action based upon a written instrument must be brought within five (5) years from the date of maturity[.] Therefore, collection efforts regarding said indebtedness cannot commence after April 1, 2003[.] Further, in that the Secretary may not initiate offset of Federal payments due to collect a debt for which authority to collect arises under 31 U.S.D. [§] 3716 more than 10 years after the Secretary's right to collect

the debt first accrued, the Secretary is precluded from pursuing offset from Petitioner as its right to collect first accrued April 1, 1998; and efforts regarding the indebtedness for which Petitioner received Notice of Intent to Collect by Treasury offset be dismissed.

(Petitioner's Petition ("Pet'r Pet."), filed April 2, 2010, ¶¶ 9-12.)

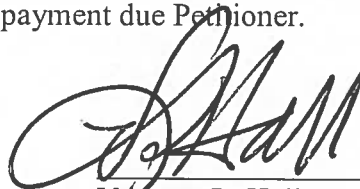
In response, the Secretary asserts that "Petitioner's argument that federal and state statute of limitations bars the collection of this debt is not a valid defense." The Secretary argues that "the Office of Appeals, in Angela Cortez, HUDOA No. 09-M-CH-AWG102, has already recognized that while 31 U.S.C. [§] 3716(e)(1) previously contained a ten-year statute of limitations, the statute was amended in 2008 to eliminate limitations period. Additionally, the Supreme Court has held that no statute of limitations exists in administrative proceedings. B.P. America Prod. Co. v. Burton[,] 127 S. Ct. 638 (2006)." (Sec'y Stat., ¶ 6.)

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.

### **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

July 28, 2010