



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

In the Matter of:

Erma McCray,

Petitioner

HUDOA No. 10-H-CH-LL40
Claim No. 7-210058350B

Erma McCray
46577 Highland Drive
Hammond, LA 70401

Pro se

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

Background

On April 27, 2000, Petitioner executed and delivered to the Secretary a Partial Claim Promissory Note ("Note") in the amount of \$2,939.46 to secure a partial claim paid on her behalf by the Secretary to pay the arrearages on her primary FHA-insured mortgage ("Primary Note") and to avoid the foreclosure of her primary residence. (Secretary's Statement ("Sec'y Stat."), filed April 14, 2010, ¶¶ 1-2, Ex. 1.) The Note states that it becomes due and payable when the borrower pays the Primary Note in full, when the maturity date of the Primary Note is accelerated, when the Primary Note or related security instrument is no longer insured by the Secretary, or when the property is no longer occupied by the purchaser as her principal residence. (*Id.* at ¶ 2, Ex. 1, ¶ 4(A).)

The Secretary is the holder of the Note, which expressly states that payment shall be made to the Office of the Housing FHA-Controller, HUD Headquarters Partial Claims, Attention: Jackie Dinker, 451 Seventh Street, S.W., Room, 6246, Washington, D.C. 20410. (*Id.* at ¶ 3, Ex. 1, ¶ 4(B).) On or about November 24, 2006, the FHA mortgage insurance on the first mortgage was terminated as the lender indicated the Primary Note was paid in full. (*Id.* at ¶ 4, Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated March 4, 2010, ¶ 4.) Consequently, pursuant to the terms and conditions of the Note, payment on the Note is due in full. (*Id.* at ¶ 4.)

HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (*Id.* at ¶ 5, Ex. 2, Dillon Decl., ¶ 5.) 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) \$1,788.49 as the unpaid principal balance as of February 28, 2010;
- (b) \$26.82 as the unpaid interest on the principal balance at 3% per annum through February 28, 2010; and
- (c) interest on the principal balance from March 1, 2010 at 3% per annum until paid.

(*Id.* at ¶ 6, Dillon Decl., ¶ 5.) A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner on January 4, 2010. (*Id.* at ¶ 7, Ex. 2, 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 challenges the existence of the alleged debt. Petitioner asserts that HUD does not have the right to pursue collection of this debt because: 1) the only two liens on her home are held by SBA and United Guaranty; 2) the HUD Subordinate Mortgage was cancelled by the Tangipahoa Parish clerk "because [the clerk] received evidence the loan was paid off" (Petitioner's Letter ("Pet'r Feb. Ltr."), ¶ 1, filed February 22, 2010.); and 3) Petitioner claims that "[a] title search was done and did not reveal HUD as having a lien or loan to the home." (Id.)

First, Petitioner asserts that HUD does not have the right to pursue collection of this debt because the only two liens on her home are held by SBA and United Guaranty. Petitioner further asserts: "We only had two lien holders which was SBA and United Guaranty." (Id.) But, Petitioner failed to submit documentary evidence in support of her allegation.

The Secretary introduced, however, evidence that showed that on April 27, 2000, Petitioner signed a Subordinate Mortgage, naming HUD as mortgagee to secure the Note. (Sec'y Stat. at ¶ 8, Ex. 3, Supplemental Declaration of Brian Dillon, ("Suppl. Dillon Decl."), dated April 13, 2010, ¶ 3.) This mortgage [naming HUD as mortgagee] was later recorded in Tangipahoa Parish, Louisiana on June 16, 2000. (Id., Ex. 3, Suppl. Dillon Decl., ¶ 3). Furthermore, a review of the record does not support the existence of only two lien holders, SBA and United Guaranty, on Petitioner's home. Based on the evidence presented by the Secretary, and without evidence from Petitioner to prove otherwise, I find that Petitioner's claim that HUD is not a lien holder entitled to collect on the subject debt must fail for lack of proof.

Second, Petitioner asserts that the HUD Subordinate Mortgage was cancelled by the Tangipahoa Parish clerk "because [the clerk] received evidence the loan was paid off." (Id. at ¶ 9, Ex. 3, Suppl. Dillon Decl. ¶ 4.) As support, Petitioner states: "I also spoke with the clerk on [February 4, 2010]. I questioned her concerning HUD and gave her the instrument #564951, book 893 and page 271. She stated that this was cancelled as well because they received evidence the loan was paid off. . . . Please reconsider this loan as paid." (Pet'r Feb. Ltr., ¶ 5.) Yet, beyond Petitioner's allegation that the clerk verified cancellation of the loan, no documentary evidence was presented by Petitioner in support of her position that the debt was officially cancelled, and thus rendered non-existent.

The Secretary, on the other hand, states: "On April 8, 2010, HUD Debt Servicing Representative Supervisor Gary Sautter contacted Christy Davidson of Tangipahoa Parish, Louisiana and confirmed the following: 1) HUD's Subordinate Mortgage was cancelled on December 11, 2006 in error; 2) there was no document issued by HUD or Washington Mutual Bank, the first mortgage holder, to cancel HUD's Subordinate Mortgage; and 3) Tangipahoa Parish Clerk of Court did not receive any evidence that HUD's subordinate mortgage was paid. (Sec'y Stat., ¶ 10, Ex. 3, Suppl. Dillon Decl., ¶ 5.) Furthermore, "Tangipahoa Parish reinstated HUD's Subordinate Mortgage on April 9, 2010." (Id. at ¶ 11, Ex. 3, Suppl. Dillon Decl., ¶ 6.)

While Petitioner has provided evidence that the primary mortgage with Washington Mutual was paid, the Secretary argues that “Petitioner has not provided any evidence that the Partial Claim payable to HUD in the amount of \$2,934.46 was paid,” and further argues that “Petitioner has provided no evidence that HUD issued a cancellation of the Subordinate Mortgage.” (*Id.* at 12, Ex. 2 and 3, Suppl. Dillon Decl., ¶ 7.) Upon reviewing the provisions set forth in the Note bearing Petitioner’s signature, the terms of the Agreement provide that when the primary mortgage has been paid in full, the subordinate mortgage becomes due and payable. Without evidence from Petitioner to prove that the Subordinate Mortgage has been paid in full, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

Third, Petitioner alleges that the debt did not exist because it was not properly recorded, and as such, should not be enforced. Petitioner claims: “A title search was done and did not reveal HUD as having a lien or loan to the home. See attachment. The effective date of the title search is 10/20/2006.” (Petitioner’s Letter “Pet’r. May Ltr.,” ¶5, filed May 3, 2010.) As support, Petitioner submitted a copy of her title report provided by the U.S. Small Business Administration. (*Id.*, Attach. Title Report, dated October 20, 2006.)

Petitioner’s obligation to repay the debt, however, is not predicated on proper recordation of the mortgage. See *In re Carol Lynn Hancock*, HUDBCA No. 07-A-NY-AWG17, at p.5 (September 25, 2008.) (finding that the Subordinate Note does not require that Petitioner’s obligation to repay the debt to HUD be... “predicated on recordation of a security interest...”); see also *In re Sherry Richards*, HUDOA No. 09-M-NY-KK02, at p.4 (April 28, 2009) (“Petitioner remains legally obligated for the repayment of the Note, regardless of the existence of a recorded lien, deed of trust, or mortgage”). Instead, Petitioner’s obligation is based on the terms of the Subordinate Note executed by Petitioner.

Upon reviewing the Note, I find that the terms of the Note remain silent regarding whether Petitioner’s obligation to repay the loan is predicated on the recordation of a security interest. But, the Note does explicitly state “In return for a loan received from Lender, Borrower[] promise[s] to pay the principal sum of [\$2,939.46] to the order of Lender.” (*Id.*) The Note bearing Petitioner’s signature also provides “By signing below, Borrower accepts and agrees to the terms and covenants contained in this Note.” One of the covenants to which Petitioner agreed was to “pay when due the principal of the debt evidenced by the Note.” (*Id.*, Exh. A, ¶ 1.) This language clearly shows that Petitioner has an obligation to repay the alleged debt according to the terms of the Note, notwithstanding the absence of language showing whether repayment is predicated on the recordation of a security interest. Consistent with *Carol Lynn Hancock* and *Sherry Richards*, I find that Petitioner likewise remains legally obligated to repay the Note regardless of the improper recordation of the lien or mortgage.

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.

A handwritten signature in black ink, appearing to read 'V. Hall', written over a horizontal line.

Vanessa L. Hall
Administrative Judge

June 1, 2010