



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

In the Matter of:

Nell R. Elliott,

Petitioner

HUDOA No. 10-H-CH-LL50
Claim No. 7-800810110B

Andrea E. Martin, Esq.
Maguire & Schneider, LLP
250 Civic Center Drive, Suite 500
Columbus, OH 43215

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

ORDER OF DISMISSAL

In 24 C.F.R. § 17.152(b) it provides that failure by the Petitioner to submit evidence within 65 calendar days from the date of the Department's Notice of Intent, will result in a dismissal of Petitioner's request for review by the HUD Office of Appeals.

Petitioner alleged, through counsel, that she "recently received the enclosed Notice of Intent to Collect by Treasury Offset sent in connection to her husband's loan. She does not dispute the validity of the debt; however, Mr. Elliott was the sole borrower and Mrs. Elliott has no financial responsibility for her spouse's loan." (Petitioner's Request for Hearing, filed February 23, 2010.) Petitioner submitted a copy of the certificate of death for her now deceased husband. However, evidence of her husband's death was not sufficient to render the alleged debt unenforceable against Petitioner. As a result, Petitioner was ordered twice to submit documentary evidence that would otherwise render the alleged debt unenforceable against Petitioner. (Order, dated April 14, 2010; Order to Show Cause, dated May 7, 2010.)

This Office has previously held that co-signers of a loan are jointly and severally liable to the obligation, and as a result, "a creditor may sue the parties to such obligation separately or together." *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). As such, "the Secretary may proceed against any co-signer for the full amount of the debt" because

each co-signer is jointly and severally liable for the obligation. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Additionally, the Secretary's right to collect the alleged debt in this case emanates from the terms of the Note. *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the subject debt, she must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

However, the Retail Installment Contract ("Contract") for the alleged debt that is the subject of this proceeding was signed by both Petitioner and her now deceased husband. (Secretary's Statement, filed July 27, 2010, Exh.#1.) In the instant case, Petitioner has failed to produce evidence of a written release from her obligation to pay the alleged debt or evidence of valuable consideration paid to HUD in satisfaction of the debt to otherwise prove that the alleged debt is unenforceable. Even though the Petitioner's spouse is now deceased, her spouse's death does not release Petitioner from her legal obligation to pay the alleged debt as so agreed per the terms of the Contract. I find, therefore, without proof of a written release, Petitioner remains legally obligated to pay the subject debt as a co-signor on the Note.

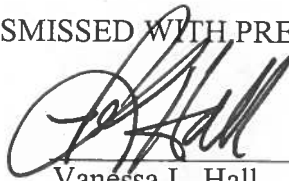
As a final point, Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including a *determination against a noncomplying party*. (emphasis added).

Accordingly, because Petitioner has also failed to comply with any of the Orders issued by this Office, I find that Petitioner's non-compliance to the Orders issued by this Office provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

Upon due consideration of Petitioner's failure to comply with 24 C.F.R. § 17.152(b) and Rule 26.3 of Title 24 of the Code of Federal Regulations, Petitioner's appeal is **DISMISSED** *sua sponte*.

ORDERED that this matter be DISMISSED WITH PREJUDICE.



Vanessa L. Hall
Administrative Judge

July 29, 2010