



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

In the Matter of:

**Rebecca S. Jones Nichols,**

Petitioner.

HUDOA No. 10-H-CH-LL64  
Claim No. 7-708416060B

Rebecca S. Jones Nichols  
2453 Douglaston  
Escondido, CA 92026

*Pro se*

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Urban Development  
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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” or “the Secretary”) 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 filed a timely 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 March 2, 2010. (Notice of Docketing, Order, and Stay of Referral (“Notice”).

## Background

On March 5, 1992, Petitioner executed a Note to repay the sum of \$10,000 (Secretary's Statement "Sec'y Stat.," filed June 24, 2010; ¶ 1 Sec'y Stat. Ex. 1, Note.) Petitioner defaulted on the Note and it was assigned to the Secretary pursuant to the provisions of the Title I Insurance Program. (Sec'y Stat. ¶ 2; Ex. 2.)

HUD has attempted to collect this debt, but Petitioner remains delinquent. The Secretary has filed a statement alleging that Petitioner is currently in default on the Note and is indebted to the Secretary in the following amounts:

- (a) \$4,990.86 as the unpaid principal balance as of February 28, 2010;
- (b) \$2,329.60 as the unpaid interest and that interest on the principal balance accrues at 5% per annum until this debt is paid in full.

(Sec'y Stat. ¶ 4; Sec'y Stat. Ex. B, Decl. of Brian Dillon, ¶ 4.)

A Notice of Intent to Collect by Treasury Offset dated February 15, 2010 was sent to Petitioner. (Sec'y Stat. ¶ 5.) Petitioner's debt was initially referred to the Department of the Treasury on December 14, 1998 and that referral was returned to the Secretary on May 24, 2002 as being uncollectible. (Sec'y Stat., ¶ 7; Ex. #3, Dillon Decl., ¶ 4, Ex. A.)

## Discussion

The Deficit Reduction Act of 1984, 31 U.S.C.A. §3720, provides federal agencies with a means of collecting debts owed to the United States Government. Petitioner bears the initial burden of submitting evidence to prove that the alleged debt is unenforceable or not past due. 24 C.F.R. § 17.152(b). *Juan Velazquez*, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

Petitioner claims that the debt is unenforceable because the alleged debt was settled upon HUD's receipt of her check payment. Petitioner contends:

This alleged debt was settled in 2001 with a settlement amount of [\$] 4,000.00 dollars. My attorney, Evan Greene, corresponded frequently with the collection agency representing HUD, clarifying that the debt is settled. I have enclosed documents of correspondence between my attorney and the collection agency, and of the cancelled check representing settlement.

(Letter from Petitioner ("Pet'r's April Letter,") filed April 24, 2010.) Petitioner states through counsel that

Both the check and the letter accompanying the check indicated that acceptance of payment constituted an accord and satisfaction of the debt. Apparently, the U.S. Department of Treasury cashed the check and stamped on the check that the restriction on payment was

refused.... Acceptance of this offer was to be effected by cashing the check. The U.S. Department of Treasury cashed the check and thereby accepted Ms. Nichols offer for an accord and satisfaction.

As support, Petitioner attached correspondence from her attorney regarding the negotiations for settlement of the subject debt, a copy of the front and back of the cancelled check purported to be the check that settled the debt, and a copy of a bank statement. (Id., Attachments.) However, the Secretary contends:

7. That Petitioner's debt was initially referred to the Department of the Treasury on December 14, 1998 and that referral was returned to the Secretary on May 24, 2002 as being uncollectable. (Exhibit #3, Supplemental Declaration of Brian Dillon, Paragraph 4) and (Exhibit A.)
8. That, in support of his position that Petitioner's debt to HUD has not been settled, HUD's Debt Collection Center contacted the Department of the Treasury and, in response to an inquiry as whether this debt had been settled, the Department of Treasury reported that the debt was not settled and that the \$4,000.00 remittance paid by Petitioner was classified as a payment. (Exhibit #3, Supplemental Declaration of Brian Dillon, paragraph 6) and Exhibit B, Treasury Collection Activity Detail Report)
9. That, as a means of clarification, in a letter, dated February 27, 2001; Petitioner's attorney apparently issued a check for the sum of \$4,000.00 with restriction related to the settlement of all claims via an "Accord and Satisfaction, on the face of the draft. The Department of Treasury negotiated the draft, but prior to cashing it, and pursuant to U.C.C. 2-107, endorsed the check as "Restrictions of Payment in Full Refused". (Exhibit C, Attorney Letter and Endorsed Draft).

(Sec'y Stat., ¶¶ 7-9.)

In the Uniform Commercial Code § 1-207 it reads: "Performance or Acceptance Under Reservation of Rights. (1) A party who, with explicit reservation of rights performs or promises performance or assets to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest" or the like are sufficient."

While Petitioner maintains that the debt has been settled, the evidence available in the record proves otherwise. First, the record contains a copy of the collection activity details regarding Petitioner's alleged debt from HUD's Debt Management Center. In the report from the Center it stated:

Rec'd call from J. WMS. (Dispute Team) asking who compromised the debt. Adv'd no one compromised the debt. The Atty sent in the \$4,000.00 and it was fwd to PCA, not as a compromise but as a payment. The debtor was to contact Treasury to conclude the negotiations prior to debt being ref to PCA. Failed to do so and debt went to PCA.

Second, upon reviewing a copy of the cancelled check submitted as evidence by Petitioner, and also as an exhibit in support of Secretary's position, the reverse side of the cancelled check indicates that this check payment was considered "**RESTRICTION OF PAYMENT IN FULL REFUSED – BALANCE OF \$7,735.21 PLUS ACCRUING INTEREST REMAINS DUE AND PAYABLE SECTION 1-207 of the U.C.C.**" (emphasis added.) (Sec'y Stat., Ex. C, p.2; Pet'r's Resp., Attachment.)

The Petitioner nonetheless contends that because her payment of \$4,000 was accepted, such acceptance of the payment by HUD should be considered satisfaction of the debt and treated as an accord and satisfaction.

In California, to obtain an accord and satisfaction under California Uniform Commercial Code, Section 3311, a debtor must prove that: "(1) [the debtor] in good faith tendered an instrument to the claimant as full satisfaction of the claim, (2) the amount of the claim was subject to a bona fide dispute, and (3) the claimant obtained payment of the instrument." *Lucky United Properties Inv., Inc. v. Lee*, 185 Cal. App. 4th 125, 110 Cal. Rptr. 3d 159 Cal. App. 1 (Dist., 2010), *citing* Cal. U. Com. Code, § 3311, subd. (a). If the debtor further proves that he accompanied the tender with a conspicuous statement that the amount was tendered as full satisfaction of the claim, and if the claimant does not prove that he tendered repayment of the amount within 90 days, the debt is discharged. *See* Cal. U. Com. Code, § 3311, subds. (b), (c).

Additionally, for payment of something less than the amount due to result in an accord and satisfaction, there must be more than mere payment of a lesser sum by the debtor. Accord and satisfaction is, in fact, a contract which must reflect the essential elements of the meeting of the minds of the parties and the giving and receiving of something of value as consideration therefore contemplated as something less than the amount claimed by a creditor. *Bryan Hays*, HUDBCA No. 90-4841-L321 (Dec. 19, 1989) (*citing* *Agers Plastics Co. v. Packaging Products*, 5975. W. 2d 177, 181 (1980) (Mo. App.)). This is true even where the check in payment of the lesser sum contained a restrictive endorsement that acceptance constituted payment in full. *Id.* Only where there has been a dispute concerning the amount due is an accord and satisfaction effected by payment and acceptance of a lesser amount. *In re Diane L. Flannigan (Holyk)*, HUDBCA No. 97-C-SE-V418, at p. 2 (June 16, 1997). If there is not an actual dispute between the parties there cannot be an accord and satisfaction since the creditor would not be giving anything up in exchange for the payment from the debtor. *Id.*, (*citing* *Allen v. R.G. Industrial Supply*, 66 Ohio St. 3d 229, 611 N.E. 2d 794 (1993)).

In this case, there is no indication that the amount of the debt owed to HUD was ever in dispute between the parties, thus no dispute existed to support the existence of an accord and satisfaction. Furthermore the inscription of the language on the reverse side of the cancelled check that states: "Restriction of payment in full refused balance of \$7,735.21... remains

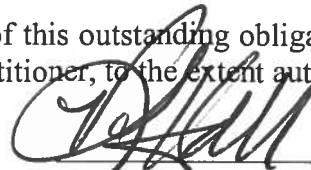
due...," indicates an explicit reservation of the right to accept Petitioner's payment as a payment in full, thereby not releasing Petitioner from further legal obligation to pay the subject debt.

Based upon the inscription language on the reverse side of the cancelled check, it is evident that HUD never intended Petitioner's payment to be treated as a full payment of the alleged debt. The intent was to *reserve the right* to accept Petitioner's payment as a payment towards the remaining balance of the alleged debt. Because there was no mutual meeting of the minds between the parties to treat the \$4000.00 payment as an accord and satisfaction, Petitioner remains legally obligated to pay the outstanding balance on the debt. Petitioner's claim that the payment amount of \$4,000.00 tendered as satisfaction of the alleged debt must fail as Petitioner has not provided sufficient evidence to that an accord and satisfaction existed in this case. Therefore I find that Petitioner's payment of \$4,000.00 does not discharge the debt and as such Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

### **ORDER**

It is hereby **ORDERED**, for the reasons set forth above, that the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset of any federal payments due to Petitioner, to the extent authorized by law.



Vanessa L. Hall  
Administrative Judge

February 9, 2011