



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

In the Matter of:

**Sergio G. Aviles and Edith Diaz,**

Petitioner

HUDOA No. 10-H-NY-LL104  
Claim No. 7-210021800A

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Pro se

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For the Secretary

**RULING ON SECRETARY'S MOTION TO DISMISS**

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 seek offset by the United States Department of the Treasury of certain Federal payments due to Petitioner to recover a claimed past due, legally enforceable debt of Petitioner to HUD.

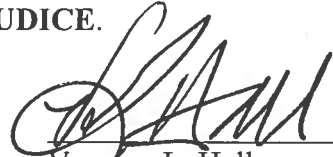
Petitioner filed a timely request to present evidence that the debt was not past due or not legally enforceable. Pursuant to 24 C.F.R. § § 17.150-17.170 and 20.4(b), the administrative judges of the HUD Office of Appeals are authorized to determine whether these debts are past due and legally enforceable. As a result of Petitioner's request, referral of the debt to the U.S. Department of the Treasury was temporarily stayed by this Office March 24, 2010.

On April 6, 2010, a Motion to Dismiss Without Prejudice was filed on behalf of the Secretary stating that "Petitioner filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the Middle District of Florida on April 9, 2009. The Chapter 13 bankruptcy was converted to a Chapter 7 bankruptcy on February 22, 2010, and is pending resolution."

Upon due consideration, the Secretary's Motion to Dismiss is **GRANTED**. It is hereby **ORDERED** that the Secretary shall not seek to collect this debt by means of administrative offset of any Federal payments due to Petitioner as the debt is unenforceable because there currently exists a pending resolution of a Chapter 7 bankruptcy for Petitioner.

The Stay of Referral of this matter to the U.S. Department of the Treasury shall remain in place indefinitely.

This matter is **DISMISSED WITHOUT PREJUDICE**.

  
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Vanessa L. Hall  
Administrative Judge

April 13, 2010