



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

In the Matter of:

**O'Dean McConnell,**

Petitioner.

HUDOA No. 10-H-NY-LL122  
Claim No. 7-646394040A

O'Dean McConnell  
192 Capps Road  
Pisgah Forest, NC 28768

Pro se

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U.S. Department of Housing and  
Urban Development  
Office of Assistant General Counsel  
For Midwest Field Offices  
77 West Jackson Boulevard  
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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.

On April 2, 2010, Petitioner made 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. § 17.152. 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 April 6, 2010. (Notice of Docketing, Order and Stay of Referral.)

## Background

On August 2, 1978 and October 29, 1981, Petitioner executed and delivered Promissory Notes ("Notes") to First Citizens Bank and Trust Company of South Carolina in the amounts of \$5,000.00 and \$5,888.35, respectively, which were insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat. ¶ 2.) Petitioner failed to make payment on the Notes as agreed. (Sec'y Stat. ¶ 3.) Consequently and pursuant to 24 C.F.R. § 201.54, on November 15, 1982, First Citizens Bank and Trust Company a/k/a First Citizens Bank and Trust Company of South Carolina assigned the Notes to the United States of America. (*Id.*) The Secretary is the holder of the Notes on behalf of the United States of America. (*Id.*)

Since Petitioner and the co-borrower failed to pay HUD, the debt was sent to the Department of Justice, which obtained a judgment for HUD. (Sec'y Stat. ¶ 4.) On September 2, 1986, the United States Attorney's Office obtained a judgment against Petitioner in the United States District Court for the District of South Carolina on the Secretary's behalf in the amount of \$7,895.90. (Sec'y Stat. ¶ 5.)

The Secretary has filed a statement alleging that Petitioner is currently in default on the judgment. (Sec'y Stat. ¶ 6.) The Secretary has attempted to collect this alleged debt from Petitioner, but has been unsuccessful. (*Id.*) The Secretary alleges that Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$3,441.22 as the unpaid principal balance as of March 31, 2010;
- (b) \$2,180.25 as the unpaid interest on the principal balance at 5.630% per annum through March 31, 2010; and
- (c) interest on said principal balance from April 1, 2010 at 5.630% per annum until paid.

(*Id.*) On January 27, 2010 a Notice of Intent to Collect by Treasury Offset was sent to Petitioner. (Sec'y Stat. ¶ 7.)

## 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).

Petitioner does not dispute the existence of the debt. Rather, Petitioner claims that the "loan was a loan for the business and the [j]udge awarded the business to my then wife (Pauline) and ordered her to pay the loan and all other debts the Child Care Center owed." (Pet'r's Letter, Jun. 2, 2010.) In support of his argument, Petitioner filed: a copy of the license granted to Pauline McConnell by South Carolina Department of Social Services to conduct a child day care center; and a divorce order from the Eleventh Judicial Circuit of Lexington, South Carolina ("Divorce Order"). (Pet'r's Hr'g Req. Attachs.)

This Office has held that “[w]here a property settlement or divorce decree purports to release one spouse from a joint obligation, the claims of the existing creditors against that spouse are not affected unless the creditors were parties to the action.” (emphasis in original) *In re Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 at 3 (May 10, 2004) (citing *In re Deborah Gage*, HUDBCA No. 86-1727-F286 (Jan. 14, 1986.)) Therefore, the Divorce Order issued by the Eleventh Judicial Circuit of Lexington, South Carolina only determines the rights and liabilities between Petitioner and his ex-wife. *In re Kimberly S. King (Theide)*, HUDBCA No. 89-4587-L74 (Apr. 23, 1990). Petitioner may wish to enforce the Divorce Order against his ex-wife in state or local court to recover monies paid by Petitioner to HUD to satisfy this obligation. However, this Office finds that the Divorce Order does not release Petitioner from liability and Petitioner, therefore, remains jointly and severally liable for this debt.

Petitioner also argues that repayment of the debt in this case would create a financial hardship. Specifically, Petitioner states that,

“The only income I have is my social security check and Medicaid pays for my Medicare Part B Premium. I am a 73 year old [sic] man with medical problems including [sic] diabetes.... If you make me pay this loan then I don’t know how I’m going to survive.”

(Pet’r’s Letter.)


This Office acknowledges Petitioner’s financial circumstances, but the law provides that “unfortunately, in administrative offset cases evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable.” *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005); *Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996); *Charles Lomax*, HUDBCA No. 87-2357-G679 (February 3, 1987). Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986). Furthermore, no regulation or statute currently exists that permits financial hardship to be considered as a basis for determining whether a debt is past-due and enforceable in cases involving debt collection by means of administrative offset. Thus, consistent with case law precedent and statutory limitations, I find that financial hardship cannot be considered as a defense in this case as the debt owed by Petitioner is sought to be collected by means of administrative offset.

While this Office is not authorized to extend, recommend, or accept any payment plan, or consider any settlement offer on behalf of HUD, Petitioner may wish to discuss this matter with either Counsel for the Secretary, or submit a HUD Office Title I Financial Statement (HUD Form 56142) to Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

**ORDER**

For the reasons set forth above, 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 seek collection of this outstanding obligation by means of administrative offset to the extent authorized by law.



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Vanessa L. Hall  
Administrative Judge

September 8, 2010