



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

In the Matter of:

Alberta A. Woods,

Petitioner

HUDOA No. 10-H-NY-LL144
Claim No. 7711537870B

Alberta A. Woods
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Sanford, NC 27330

Pro se

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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 states that she "was recently informed that a bill that my husband Harry Woods who has past [sic] away two years ago July 1, 2008 still had owed HUD money from a prior loan and that now you were garnishing my disability check 15% which is 207 dollars a month[.] I only get 1074.00 a month that's [sic] leave me struggling to pay all my bills and take care of myself [.] (Petitioner's Letter, dated June 14, 2010.) While Petitioner raises financial hardship as a basis for cancelling the alleged debt "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). As such, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

While this Office is not authorized to extend, recommend, or accept any payment plan, or consider any settlement offer on behalf of HUD due to Petitioner's financial circumstances, 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.

Next, Petitioner states "I would really like if you could reduce the percentage or cancel the account my husband has past [sic] on leaving me with one income and all his bills." The death of the co-signer on the alleged debt, in this case Petitioner's husband, likewise does not release Petitioner from her joint and several liability for the debt that is the subject of this proceeding, unless Petitioner produces evidence that shows she has been released from the alleged debt. While Petitioner maintains that this debt should be cancelled because her husband is now deceased, this Office has consistently 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).

Furthermore, 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). Here, the record shows that the Retail Installment Contract ("Contract") for the debt that is the subject of this proceeding bore the signatures of the Petitioner and her now deceased husband. (Secretary's Statement, filed July 27, 2010, Exh. #1.) When a husband and wife jointly execute a loan agreement, the death of a spouse does not extinguish a party of the debt, and the surviving spouse is responsible for the entire debt. *Terrie LaCombe Fritcher*, HUDBCA No. 03-A-CH-AWG37, (January 12, 2004) (citing *Thelma Smith*, HUDBCA No. 00-A-NY-AA8, at 2 (June 19, 2000)). Furthermore, "Petitioner has submitted no evidence, nor has she made a persuasive legal argument to prove that her obligation to repay the debt was extinguished by the death of her husband." See *Thelma Smith*, at 2, (citing *Ronald G. Brauer*, HUDBCA No. 99-C-CH-Y304 (February 29, 2000)). In fact, the record reflects that Petitioner has failed to submit any documentary evidence of a release from her obligation to pay or evidence that would otherwise render the alleged debt unenforceable against Petitioner, despite being ordered on three occasions to do so. (Notice of Docketing, Order, and Stay of Referral, dated June 15, 2010; Order, dated July 27, 2010; Order to Show Cause, dated August 24, 2010.)

Therefore I find that, without proof of a written release or proof of the extinguishment of the debt by the death of Petitioner's husband, Petitioner remains legally obligated to pay the subject debt as the co-signer on the Note, and as such, the Secretary may collect the full amount of the alleged debt from Petitioner.

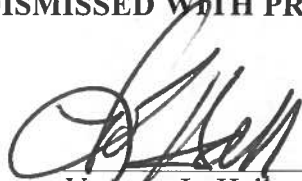
As a final point, Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

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

September 8, 2010