



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

In the Matter of:

Jerry J. and Lori E. Hebert,

Petitioners

HUDOA No. 10-H-NY-LL146
Claim No. 7-210065500B

For Petitioners

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For the Secretary

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DECISION AND ORDER

Petitioners were notified 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 administrative offset of any federal payments due to Petitioners in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD.

On June 21, 2010, Petitioners made a request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. 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. *See* 24 C.F.R. §§ 17.152 and 17.153. As a result of Petitioners' hearing request, referral of the debt to the U.S. Department of the Treasury for administrative offset was temporarily stayed by this Office on June 22, 2010 until the issuance of a written decision by the administrative judge. *See* 24 C.F.R. § 17.156.

Background

On February 15, 2008, Petitioners executed and delivered to the Secretary a Partial Claims Promissory Note ("Subordinate Note") in the amount of \$6,338.76, in exchange for foreclosure relief being granted by the Secretary. (Secretary's Statement ("Sec'y Stat."), filed August 3, 2010, ¶ 2, Ex. A.) On or about October 6, 2009, the FHA insurance on Petitioners' primary note was terminated when the lender informed the Secretary that the primary note was paid in full. (*Id.* at ¶ 4; Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated June 30, 2010, ¶ 4.)

Petitioners failed to make payment on the Subordinate Note and consequently, Petitioners' debt to HUD is delinquent. (Sec'y Stat., ¶ 6; Dillon Decl, ¶ 5.) The Secretary has made efforts to collect this debt from Petitioners, but has been unsuccessful. Therefore, Petitioners are justly indebted to the Secretary in the following amounts:

- (a) \$6,338.76 as the unpaid principal balance as of June 30, 2010;
- (b) \$21.24 as the unpaid interest on the principal balance at 1.0% per annum through June 30, 2010; and
- (c) interest on said principal balance from July 1, 2010 at 1.0% per annum until paid.

(Sec'y Stat., ¶ 7; Dillon Decl., ¶ 5.) A Notice of Intent to Collect by Treasury Offset, dated May 28, 2010, was sent to Petitioners. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 6.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides Federal agencies with a remedy for the collection of debts owed to the United States Government. Petitioners bear the initial burden of submitting evidence to prove that the debt is not past-due or legally enforceable. 24 C.F.R. § 17.152(b); *Juan Velazquez*, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

Petitioners argue that the subject debt is not legally enforceable against them because when they sold their home and received a payoff letter from the attorney representing Wells Fargo, they assumed that their payment of Wells Fargo loan number 936-0632000345 was a payoff of HUD's debt as well. (Petitioners' Request for Hearing ("Pet'r Hr'g Req."), filed June 21, 2010.) Petitioners state that they "understood they had in place a single mortgage lien in favor of Wells Fargo Home Mortgage, Inc., and they understood they had only one (1) mortgage account and were paying one (1) single mortgage under that account number." Petitioners further state that "[i]t is [their] contention that [their] receipt of this payoff information from the attorneys in the foreclosure action representing [the Wells Fargo loan] in the amount of \$135,032.20, was a full and complete payout of that mortgage claim." (*Id.*) As support, Petitioners submitted copies of: a payoff letter from the attorney, Steven J. Baum, P.C., who represented Wells Fargo; a payoff itemization prepared by Steven J. Baum, P.C.; and, a copy of a payoff check to Steven J. Baum, P.C., in trust for \$135,032.20. (*Id.*; Petitioners' Documentary Evidence ("Pet'r Evid."), filed August 2, 2010.)

In response, the Secretary contends that “Wells Fargo and HUD are not co-lenders on a single note and mortgage,” but that “HUD, and HUD alone, is the lender on [the] HUD’s Subordinate Note.” (Sec’y Stat., ¶¶ 10, 11.) The Secretary further states that “Petitioners’ sale of their mortgaged property, their satisfaction of their Wells Fargo mortgage, and the subsequent termination of the FHA insurance were the events that triggered repayment making Petitioners’ debt to HUD due and payable.” (*Id.* at ¶ 12.) “Once Petitioners’ debt to HUD became due and payable, payment to HUD should have been made in the manner specified in the Subordinate Note.” (*Id.* at ¶ 13.) In addition, the Secretary contends that “the Note indicates that upon payment in full of the primary note, Petitioners were to make payment to the Secretary at “U.S. Department of HUD, C/O C&L Service Corporation / Morris Griffin Corporation, 2488 E. 81st St., Ste. 700, Tulsa, OK 74137 or any such other place as [the Secretary] may designate in writing by notice to Borrower.” (*Id.* at ¶ 5, Ex. A, ¶ 3(B).) “If it is Petitioners’ contention that they paid HUD’s debt to the attorney for Wells Fargo, Steven J. Baum, P.C.,” the Secretary continues, “neither the Note nor HUD authorized Steven J. Baum, P.C. to receive payments on HUD’s behalf.” Moreover, Petitioners neither have produced evidence to show that HUD directed them to make payment to Steven J. Baum, P.C., nor have they produced evidence to show that they actually paid HUD’s debt to Steven J. Baum, P.C. or that HUD has received payments from Steven J. Baum, P.C. on Petitioners’ behalf.” (*Id.* at ¶¶ 15-16.)

The record shows, upon review, that while Petitioners have filed documentation showing the amounts Petitioners were required to pay on the mortgage with Wells Fargo, Petitioners have failed to file sufficient documentary evidence in support of their argument that they paid off the subject debt owed to HUD in this case. Petitioners also have failed to specifically show that HUD authorized Wells Fargo to receive payments due to HUD on HUD’s behalf, that HUD directed Petitioners to make payment to Wells Fargo, or that Petitioners actually paid HUD’s debt to Wells Fargo. This Office has ruled that in order to be discharged from an obligation to repay the alleged debt to HUD, Petitioners must have been issued a release, in writing, from HUD. *In re Juanita Mason*, HUDOA No. 08-H-NY-AWG70 (December 8, 2008). Petitioners have not filed any written release from the alleged debt in this case and have failed to provide sufficient evidence to show that the alleged debt has been repaid in full. In the absence of a written release from HUD discharging Petitioners from their obligation to repay the debt, I find that Petitioners remain legally obligated to pay the debt owed to HUD.

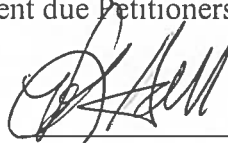
Therefore, Petitioners have not met their initial burden to prove that the debt in this case is not past due or legally enforceable. The Secretary, on the other hand, has filed the Secretary’s Statement, together with documentary evidence, to prove that Petitioners’ alleged debt to HUD in this case remains enforceable and past due. In the absence of documentary evidence from Petitioner that refutes or rebuts the Secretary’s position, I find that Petitioners remain legally obligated to pay the debt that is the subject of this proceeding.

ORDER

For the reasons set forth above, I find that the subject debt is legally enforceable against Petitioners in the amount claimed by the Secretary.

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 refer this matter to the U.S. Department of the Treasury for administrative offset of any payment due Petitioners.



Vanessa L. Hall
Administrative Judge

January 6, 2011