



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

In the Matter of:

William C. Gustkey,

Petitioner

HUDOA No. 10-H-NY-LL149
Claim No. 78-0478696

William C. Gustkey
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Johnstown, Pa. 15901

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 "We donot[sic] owe this loan[.] We've been in a Bankruptcy since 2005. It would have been pd. Off in June (this month.)" (Petitioner's Request for Hearing, ("Request for Hearing", filed June 14, 2010.)

Petitioner was ordered on three occasions to submit documentary evidence in support of Petitioner's position that the subject debt was discharged by bankruptcy. (Notice of Docketing, Order, and Stay of Referral, ("Notice"), dated July 6, 2010; Order ("Aug. Ord."), dated August 24, 2010; Order to Show Cause, ("Sept. Order") dated September 23, 2010). Petitioner was then ordered specifically to submit:

- (1) An order of discharge which proves that the subject debt to HUD or to the lending institution which made the HUD or Federal Housing Administration ("FHA") insured loan to

Petitioner has, in fact, been discharged by the U.S. Bankruptcy Court; and,

- (2) The schedule of creditors filed with the U.S. Bankruptcy Court which lists the subject debt to HUD or to the lending institution which made the HUD/FHA insured loan to Petitioner.

(Aug. Ord.; Order to Show Cause, dated September 23, 2010.)

However, Petitioner failed to comply with any of the Orders issued by this Office.

Petitioner also contends that this debt should be pursued against Petitioner's spouse. While there is no evidence from the record that the Petitioner is actually divorced, this Office has consistently maintained 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). As such, "the Secretary may proceed against any co-signer for the full amount of the debt" because each co-signer is jointly and severally liable for the obligation. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Additionally, 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). For Petitioner not to be held liable for the subject debt, there must be some evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986). Petitioner has not introduced evidence of a written release from HUD, only evidence of an allegation that HUD was paid in full. As a recourse, Petitioner may seek to recover from the ex-spouse, in the state or local court, monies paid to HUD by Petitioner in order to satisfy this legal obligation. See *Michael York*, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3. I find, therefore, without proof of a written release, Petitioner remains legally obligated to pay the subject debt as a co-signer on the Note.

Petitioner next contends that "I have a part time job. I don't work in the summer. I clean at a school. I'm 65 years old and I'm retiring." Petitioner also alleges that:

"we've been paying \$1,464 a month since the year 2005...that's a lot of money. That's [\$]17,616 a year plus even when we got an extra pay a month, they took it out. It was suppose to be 2 times a month, they took it out 3 times so that was some [of the] times they took \$4,392 a month."

This Office acknowledges Petitioner's financial circumstances, but the law provides "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 exist 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 settlement offer on behalf of the HUD, or to forgive a debt, Petitioner may wish to discuss this matter with either Counsel for the Secretary or Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206. Petitioner may also request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

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

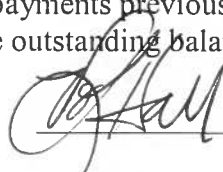
If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*. (emphasis added).

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), Petitioner’s appeal is *DISMISSED sua sponte*. It is hereby

ORDERED that this matter be **DISMISSED WITH PREJUDICE**. It is hereby

FURTHER ORDERED that any payments previously made towards the subject debt by Petitioner, if any, should be reflected in the outstanding balance claimed by the Secretary.



Vanessa L. Hall
Administrative Judge

January 6, 2011