



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

In the Matter of:

Bernadette Stegall,

Petitioner

HUDOA No. 10-H-NY-LL152
Claim No. 7-710316110A

For Petitioner

Ronald G. McNeil, Esq.
1333 Race Street
Philadelphia, PA 19107-1585

For the Secretary

Julia Murray, Esq.
U.S. Department of Housing and
Urban Development
Office of Regional Counsel
for New York/New Jersey Field Offices
26 Federal Plaza, Room 3237
New York, NY 10278

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”) 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 July 26, 2010, Petitioner 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. 24 C.F.R. §§ 17.152, 17.153. As a result of Petitioner’s hearing request, referral of the debt to the U.S. Department of the Treasury for administrative offset was temporarily stayed by this Office on July 27, 2010 until the issuance of a written decision by the administrative judge. 24 C.F.R. § 17.156.

Background

On May 17, 1996, Petitioner executed and delivered a Home Improvement Installment Contract ("Note") to Allstate Discount Builders, Inc. in the amount of \$9,500.00, which was insured against nonpaying by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y Stat."), filed October 15, 2010, ¶ 2, Ex. A.) On the same day, the Note was assigned by Allstate Discount Builders, Inc. to Mego Mortgage Corporation ("Mego Mortgage"). (*Id.* at ¶ 3, Ex. A, p.2.) Thereafter, the Note was assigned by Mego Mortgage to First Trust of New York, National Association. (*Id.* at ¶ 4, Ex. A.)

After default by Petitioner, on July 21, 1999, the Note was assigned by First Trust of New York, National Association to the Secretary pursuant to the provisions of 24 C.F.R. § 201.54. (*Id.* at ¶ 5, Ex. B.) The Secretary has attempted to collect this debt, but Petitioner remains delinquent. (Sec'y Stat., ¶ 6; Ex. C, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated October 15, 2010, ¶ 8.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD in the following amounts:

- (a) \$9,459.50 as the unpaid principal balance as of October 14, 2010;
- (b) \$5,558.44 as the unpaid interest on the principal balance at 5.0% per annum through October 14, 2010; and
- (c) interest on said principal balance from October 15, 2010 at 5.0% per annum until paid.

(Sec'y Stat., ¶ 6; Dillon Decl., ¶ 8.) A Notice of Intent to Collect by Treasury Offset, dated February 1, 2010, was sent to Petitioner. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 9.)

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. Petitioner bears 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).

Petitioner contends that the debt is unenforceable because it was discharged as part of her Chapter 13 bankruptcy proceeding filed on September 16, 1996. Petitioner states that she "filed [a Chapter 13] bankruptcy [, case number 96-18763,] on September 16, 1996 . . . [T]his Chapter 13 Plan was confirmed on July 8, 1997. Subsequently . . . [Petitioner] . . . was granted a discharge on July [2]5, 2001." (Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed July 26, 2010.) As support, Petitioner filed a copy of her July 25, 2001 Discharge Order, Mego Mortgage's October 17, 1996 Proof of Claim and Petitioner's Schedules D, E and F. (Petitioner's Documentary Evidence ("Pet'r Evid."), filed September 14, 2010.)

Petitioner also states that during the pendency of her bankruptcy proceeding, she filed an Adversary Proceeding seeking a determination of the validity and extent of the lien held by

Mego Mortgage and other creditors. (Pet'r Hr'g Req.) Petitioner alleges that as a result of the Adversary Proceeding, the second, third and fourth mortgages on Petitioner's property were "crammed down," and therefore, Petitioner was discharged from bankruptcy after payment of the amounts shown on the Trustee's Report. (*Id.*)

The Secretary acknowledges that Petitioner filed for bankruptcy on September 16, 1996, four months after signing the Note. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 4.) The Secretary also acknowledges that on October 17, 1996, Mego Mortgage filed a secured claim in Petitioner's bankruptcy action in the amount of \$9,627.13, and that the arrears due on the Note at the time the claim was filed were \$320.32. (Sec'y Stat., ¶ 11, Ex. D; Dillon Decl., ¶ 4.) "The \$320.32 arrears were paid to Mego Mortgage through Petitioner's bankruptcy plan, with no further disbursements made." (Sec'y Stat., ¶ 12, Ex. E; Dillon Decl., ¶ 5.)

The Secretary asserts, however, that Petitioner's Chapter 13 bankruptcy did not discharge her liability on the subject debt. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 7.) As support, the Secretary filed a copy of the order discharging Petitioner, which cites to 11 U.S.C. § 1328(c), providing that the debtor is discharged from all debts provided for by the plan or disallowed under 11 U.S.C. § 502, except any debt provided for under 11 U.S.C. § 1322(b) (5). (Sec'y Stat., ¶ 14, Ex. F; Dillon Decl., ¶ 7.) 11 U.S.C. § 1322(b) (5) provides that a debt is not discharged on a secured claim on which the last payment is due after that date on which the final payment under the plan is due. (Sec'y Stat., ¶ 15; Dillon Decl., ¶ 7.) The subject debt was secured and the final payment on the Note was not due until May 1, 2007, which is subsequent to the July 21, 2001 discharge. (Sec'y Stat., ¶ 16; Dillon Decl., ¶ 7.) "While Petitioner's bankruptcy provided for the payment of the arrears on the debt through the plan, pursuant to 11 U.S.C. § 1328(c), the amounts due after the completion of the plan were not discharged." (Sec'y Stat., ¶ 17, Ex. F.) Upon further examination of the statutory language, and the documentation submitted by Petitioner, the debt that is the subject of this proceeding had been secured after the date of the bankruptcy discharge, and the debt also was not due until May 1, 2007, again after the date of the bankruptcy discharge.

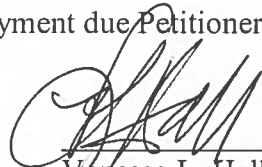
The Secretary asserts, moreover, that "Petitioner has not provided any documentary evidence to substantiate her claim that the Adversary Proceeding Petitioner filed during the pendency of her bankruptcy proceeding resulted in the reduction of the secured claim filed by Mego Mortgage from \$9,627.13 to \$320.32." (Sec'y Stat., ¶ 20; Dillon Decl., ¶ 6.) "Petitioner has not provided a copy of the court's Order relative to the Adversary Proceeding, or any other documentation in support of her contention." (*Id.*) "After reviewing the documents provided by Petitioner and contained in the HUD's file, HUD could find no information to support the claim that HUD's debt was discharged." (*Id.*) Likewise, the record shows upon further examination that Petitioner failed to provide any evidence that supports her claim of reduction, or otherwise refutes or rebuts the Secretary's claim that the amount of the subject debt is enforceable or past due. This Office has consistently maintained that "assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due or enforceable." *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Accordingly, I find that Petitioner's claim must fail for lack of proof.

ORDER

For the reasons set forth above, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner 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 Petitioner.



Vanessa L. Hall
Administrative Judge

January 6, 2011