



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

In the Matter of:

Donna C. Birch,

Petitioner.

HUDOA No. 10-H-NY-LL26
Claim No. 7-706331930B

Donna C. Birch
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East Dublin, GA 31027

Pro se

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For the Secretary

DECISION AND ORDER

On January 27, 2010, 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 to recover a claimed past-due, legally enforceable debt owed to HUD by referring the matter to the U.S. Department of the Treasury.

On February 17, 2010, Petitioner made a request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The Office of Appeals has been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. § 17.152(c). 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 February 23, 2010, until the issuance of a written decision by the Administrative Judge. *See* 24 C.F.R. § 17.156.

Background

On October 29, 1990, Petitioner (a/k/a/ Donna C. Aaron) executed and delivered a Retail Installment Contract (“Note”) to Ranch Park Homes of Dublin, Inc. in the amount of \$21,407, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (“Sec’y Stat.”), filed June 3, 2010, ¶ 2; Ex. A, Note.) Contemporaneously, on October 29, 1990, the Note was assigned by Ranch Park Homes of Dublin, Inc. to American Southern Financial Company. (Sec’y Stat. ¶ 3; Note) On November 20, 1990, the Note was then assigned to by American Southern Financial Company to Lender Service, Inc. (Sec’y Stat. ¶ 4; Note.)

After Lender Service, Inc. went out of business, the Government National Mortgage Association (“GNMA”) took over the loan under the regulations governing the Title I insurance program. (Sec’y Stat. ¶ 5; Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of the United States Department of Housing and Urban Development (“Dillon Decl.”), dated March 18, 2010, ¶ 3.) General Electric Capital Corporation was the agent for GNMA. (Id.) On April 15, 1993, General Electric Capital Corporation, as agent for GNMA, assigned the Note to the United States of America, as a result of Petitioner’s failure to make payment on the Note as agreed. (Sec’y Stat. ¶ 6; Note.)

The Secretary, as holder of the Note on behalf of the United States of America, has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD. The Secretary alleges that Petitioner is currently in default and is indebted to HUD in the following amounts:

- (a) \$3,333.26 as the unpaid principal balance as of February 28, 2010;
- (b) \$1,133.22 as the unpaid interest on the principal balance at 4% per annum through February 28, 2010; and
- (c) interest on said principal balance from March 1, 2010, at 4% per annum until paid.

(Sec’y Stat. ¶ 7; Dillon Decl. ¶ 4.)

A Notice of Intent to Collect by Treasury Offset dated January 27, 2010 was sent to Petitioner. (Sec’y Stat. ¶ 8; Dillon Decl. ¶ 5.) Petitioner was also sent a copy of Petitioner’s Title I Defaulted Loans Case Reconstruction Report (“Title I Report”) detailing all activity on the account. (Sec’y Stat. ¶ 10; Dillon Decl. ¶ 6.) The Secretary alleges that due to the accrual of interest on the unpaid principal balance, payments received from Petitioner to date have not satisfied her indebtedness to HUD. (Sec’y Stat. ¶ 11.)

Discussion

Petitioner does not dispute the existence of the debt. Rather, Petitioner claims, “[s]ome years ago, income tax refunds to which I was entitled were attached in order to satisfy this debt and I have had no correspondence since, thus leaving me to assume that my obligation was met.”

(Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed February 17, 2010.) As a result, Petitioner believes that, "...the interest accrued since 09/07/2001 is unfair due to the fact that I was unaware that the debt had not been satisfied." (Petitioner's Documentary Evidence ("Pet'r's Doc. Evid."), filed May 14, 2010.) This Office has previously held that Petitioner's ignorance of the lawful interest applied to the outstanding principal will not relieve her of her obligation to pay the principal due and any interest that has accrued. *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052, at 4 (June 15, 2005). When the principal balance is valid and legally enforceable, so too is the interest that attaches to it." *Thomas R. Herrin*, HUDBCA No. 88-2848H372, at 2 (December 9, 1987). Petitioner has failed to submit any evidence to prove that the interest attached to the debt that is the subject of this proceeding is invalid. Accordingly, I find that Petitioner's debt and interest in this case is valid and legally enforceable.

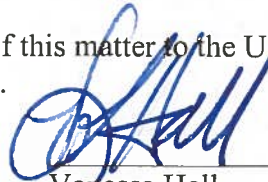
Lastly, Petitioner claims that her ex-husband should be liable for the debt because "[t]he loan was in his name only." (Pet'r's Doc. Evid., *Letter.*) However, the Note bears both Petitioner's name and signature. As a cosigner on the Note, Petitioner is jointly and severally liable for the debt. When a liability is joint and several, a creditor may sue each obligor individually or collectively for the full amount of the debt. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 at 4 (May 10, 2004) (citing *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314 (July 15, 1987)). In order to prove that she is not liable for the debt, Petitioner must submit evidence of either: (1) a written release from the creditor showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to the creditor to release her from her obligation. *Cynthia Ballard Rachall*, HUDOA No. 09-H-CH-AWG103 (citing *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000)). Petitioner filed the Title I Report that reflected the previous payments made by Petitioner towards the unpaid debt. However the Title Report did not reflect that Petitioner was released from her legal obligation to pay this debt. As such, the payments reflected in the Title I Report were insufficient to show that the principal balance and accrued interest were paid in full. As a result, Petitioner also has failed to submit sufficient documentary evidence to prove that only her ex-husband was obligated to pay the debt in this case.

ORDER

Based upon the foregoing, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset of any federal payments due to Petitioner.

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset is VACATED.



Vanessa Hall
Administrative Judge

July 22, 2010