



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

In the Matter of:

Ruth G. (Morris) Davis,

Petitioner

HUDOA No. 10-H-NY-LL32
Claim No. 7-709816420B

Ruth G. (Morris) Davis
258 Branchwood Circle
Kings Mountain, NC 28086

Pro se

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

For the Secretary

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 February 17, 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 and 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 February 23, 2010 until the issuance of a written decision by the administrative judge. *See* 24 C.F.R. § 17.156.

Background

On July 11, 1995, Petitioner executed and delivered a Retail Installment Contract and Disclosure Statement (“Note”) to Community Builders in the amount of \$10,500, 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 30, 2010, ¶ 2, Ex. A, p. 1.) On the same day, the Note was assigned by Community Builders to Empire Funding Corp. (*Id.* at ¶ 3, Ex. A, p. 2.) Subsequently, the Note was assigned by Empire Funding Corp. to Coast Partners Acceptance Corp. (*Id.* at ¶ 4, Ex. A, p. 2.) Petitioner defaulted on the Note, and on January 15, 1997, the Note was assigned to the Secretary pursuant to the provisions of the Title I insurance program. (*Id.* at ¶ 5, Ex. A, p.2.)

HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (*Id.* at ¶ 6, Ex. 2, Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated March 9, 2010, ¶ 4.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

- (a) \$10,069.06 as the unpaid principal balance as of February 28, 2010;
- (b) \$338.18 as the unpaid interest on the principal balance at 5% per annum through February 28, 2010; and
- (c) interest on the principal balance from March 1, 2010 at 5% per annum until paid.

(*Id.*, Ex. B, Dillon Decl., ¶ 4.) A Notice of Intent to Collect by Treasury Offset dated January 27, 2010 was sent to Petitioner. (*Id.* at ¶ 7, Ex. B, Dillon Decl., ¶ 5.)

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 does not deny the existence or delinquency of the debt that is the subject of this proceeding, but, Petitioner contends that the alleged debt is unenforceable because: (1) the debt was fraudulently created, and thus resulted in Petitioner now being held responsible for paying back two loans, rather than one loan, for the home repairs; (2) Petitioner has not received any information regarding payments made on the loan prior to 1996; and (3) the repayment of the debt would cause financial hardship for Petitioner.

First, Petitioner contends that she is paying back two loans for the home repairs, and that "[t]his debt was fraudulently made by the builder involved in this case." (Petitioner's Request for Hearing ("Pet'r Hrg. Req."), filed February 17, 2010; Petitioner's Letter, "Pet'r Ltr.." filed May 20, 2010, p.2.) Petitioner states:

The reason I said it was fraudulent is because when the loan was taken out the man that s[e]t up the loan for my mother is no[w]here to be found. He has her paying back two loans for that home repair. He had her to take out a second mortgage on her home with First Union bank for 40 thousand dollars for the same loan. Nobody seem[s] to know what that was for. My mother never received any money from that loan.

If you will notice[,] both deeds of trust w[ere] for the same loan. My mother is listed on the Department of the Treasury page. . . I don't understand why two people living in the same household is to pay on one loan.

(Pet'r Ltr., p. 2.)

Petitioner submitted a copy of both deeds of trusts but there was no indication, upon review, that the two deeds of trust were related to the same loan. But, the evidence provided by Petitioner was not sufficient enough to prove her claim of fraudulency, or to prove that such fraud resulted in the creation of two different loans that both were somehow related to the debt that is the subject of this proceeding.

While Petitioner has failed to submit documentary evidence sufficient enough to substantiate that the debt is unenforceable due to fraud, the Secretary has submitted a copy of the Note at issue that Petitioner signed on July 11, 1995, that later was assigned to HUD on January 15, 1997. (Sec'y Stat., ¶¶ 2, 5, Ex. A, pp. 1, 2.) According to the terms of the Note, Petitioner agreed and accepted the terms and covenants contained therein, one of which showed that Petitioner "promises to pay Seller or the Assignee the amounts shown on the form shown below and, as security for the payment and performance of Buyer's obligation under this contract, *Buyer shall execute and deliver to the Seller a Mortgage on the property where improvement will be located and/or any other property proffered as security.*" (Emphasis added.) (Id.) The Secretary further asserts:

Although Petitioner alleges problems with the home improvement work performed by the contractor were not corrected[,] on August 2, 1995, Petitioner signed the "Completion Certificate for Property Improvements" certifying that the work performed by the contractor was completed to her satisfaction and in accordance with the terms of the contract.

Moreover, while it appears that Petitioner required some patch work around pipes and developed a leaky faucet after the improvements were made, on October 2, 1995, Petitioner confirmed that the contractor completed the work.

(Sec'y Stat., ¶¶ 12-13, Ex. C, Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, Financial Operations Center of HUD ("Porter Decl."), dated June 16, 2010, ¶¶ 5-6, Exs. C, D.) Further, the Secretary adds:

Petitioner executed the HUD-insured Note on July 11, 1995. Prior thereto, on June 23, 1995, Petitioner executed a Deed of Trust in favor of First Union National Bank of North Carolina in the amount of \$43,200.00.

The Deed of Trust was not a HUD-insured property improvement loan, since the amount of the loan far exceeds HUD's insurable limit for property improvement loans on single

family homes. See Section 2 of Title I of the National Housing Act, 12 U.S.C. § 1703, *et seq.*

HUD has no information regarding the funds borrowed by Petitioner on June 23, 1995, and the instant action does not seek to collect any outstanding indebtedness related to those funds.

(Sec'y Stat., ¶¶ 9-11, Ex. C, Porter Decl., ¶ 3, Ex. A.)

Furthermore, upon a careful review of the evidence of record, this Office finds that while the Secretary has successfully met his burden of proof that the two loans were unrelated and that no fraud was involved, Petitioner has failed to submit the documentary evidence necessary to support her claim that she is paying back two different loans obtained by fraudulent means for the home repairs related to the property that is the subject of the alleged debt. Petitioner has also failed to produce sufficient evidence to rebut the Secretary's position that the two different loans alleged by Petitioner are unrelated.

Petitioner was ordered on three occasions to provide documentary evidence in support of her allegations of fraud but Petitioner failed to do so in compliance with the Orders issued. (Notice of Docketing, Order, and Stay of Referral, ("Notice of Docketing"), dated February 23, 2010; Order dated March 26, 2010; Order to Show Cause, dated May 7, 2010.) This Office has consistently maintained that "[a]ssertions 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). Therefore, Petitioner's claim that the debt is unenforceable due to fraud must fail for lack of proof.

Second, Petitioner contends that she has received no information regarding payments made on the loan prior to 1996. Petitioner claims:

This loan has been passed on to a couple of different people. There is no record of payments before 1996. Money was being offset out of my mother's Social Security before and then all of a sudden it stopped. Then it started back again. There is also no record of that on the print-out that you all sent me.

I work from 7:45a.m. until 4:15 pm. By the time I get off from work it is hard for me to contact anyone as everything shut down around 4:30pm. I tried to find old receipts, but most of them had been thrown away. I have been trying to contact Social Security to see if they had a record of when the offset first begin. I am also trying to find all the papers from the original loan.

(Pet'r Ltr., p. 2.)

While Petitioner submits that she made every effort to contact certain offices to obtain the necessary documentation to prove her claim, to date, the record does not contain any documentary evidence beyond Petitioner's allegations that proves that Petitioner did not receive any information regarding payments prior to 1996. Nevertheless, the Secretary submits

documentary evidence showing payments made on the loan prior to 1996. As proof, the Secretary submits documentation that includes a copy of a Title I Claim for Loss Application Voucher (“Voucher”) in which it is indicated that Petitioner’s first installment on the loan was September 3, 1995, and thereafter the date indicated on the Voucher was the date of default, July 3, 1996. (Sec’y Stat., Ex. E.) The Secretary also states:

[A]ccording to the lender’s Title I Claim for Loss filed with HUD, Petitioner made nine payments totaling \$1,495.80 prior to defaulting on July 3, 1996.

HUD began receiving monthly payments on Petitioner’s debt on August 3, 2005 pursuant to the U.S. Department of the Treasury’s Offset Program. Since then, HUD has received 48 offsets through June 3, 2010 totaling \$5,467.50.

(Sec’y Stat., ¶¶ 14-15, Ex. C, Porter Decl., ¶¶ 7-8, Exs. E, F.)

As support, the Secretary also provides copies of Petitioner’s Case Reconstruction Report that listed payments made by Petitioner towards the subject debt. (Id.) Upon a careful review of the evidence provided by the Secretary, and without a rebuttal from Petitioner, this Office finds that Petitioner again has failed to submit sufficient and credible documentary evidence in support of her assertion that “[t]here is no record of payments before 1996” or to rebut the Secretary’s position and evidence, that payments were made on the loan prior to 1996. In fact, the record instead indicates that the same documentation referenced in the Secretary’s Statement to prove that Petitioner made payments prior to 1996, were actually the same documents sent to Petitioner by certificate of service on June 30, 2010. As such, due to Petitioner’s failure to meet her burden of proof, this claim also fails for lack of sufficient and credible proof.

Finally, Petitioner states that repayment of the debt due to HUD would create a financial hardship for Petitioner. Petitioner states:

I work for a temporary company. I make \$7.50 an hour. I pay the utilities, water and phone, I had to take two checks added together to pay a \$360.00 light bill. I am currently under a doctor[‘]s care for emphysema, asthma. and COPD. I have applied for Disability. When I receive my income tax each year, it is to make needed repairs on the house[] that we otherwise couldn’t afford. I hope you please take these things into consideration.”

(Pet’r Ltr., p. 2.)

While this Office acknowledges Petitioner’s financial circumstances, the law provides that “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, however, 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 exists 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.

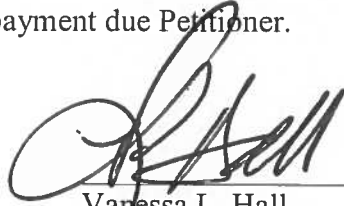
This Office is not authorized to extend, recommend, or accept any payment plan, or consider any settlement offer on behalf of HUD, however, Petitioner may wish to discuss this matter with either Counsel for the Secretary, or submit a HUD Office Title I Financial Statement (HUD Form 56142) to Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

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

August 31, 2010