



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

In the Matter of:

Susan Mathis,

Petitioner.

HUDOA No. 10-H-NY-LL42

Claim No. 7-708480560A

Susan Mathis
188 Stevens Rd.
Saluda, SC 29138

For Petitioner

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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” or “the Secretary”) 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 22, 2010, Petitioner made a timely request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The Office of Appeals has jurisdiction to determine whether Petitioner’s debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b). 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, this Office temporarily stayed referral of the debt to the U.S. Department of Treasury for offset on February 24, 2010. (Notice of Docketing, Order and Stay of Referral (“Notice”), dated February 24, 2010.)

Background

On January 11, 1993, Petitioner (a/k/a Susan S. Mathis) executed and delivered a Retail Installment Contract, Note and Disclosure Statement ("Note") to Southeast Factory Direct in the amount of \$24,750 which was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat. ¶ 2; Sec'y Stat. Ex. A, Note.) Contemporaneously, on January 11, 1993, the Note was assigned by Southeast Factory Direct to Empire Funding Corp. (Sec'y Stat. ¶ 3; Sec'y Stat. Ex. A, Note at p. 2.) The Note was subsequently assigned by Empire Funding Corp. to TMI Financial, Inc. (Sec'y Stat. ¶ 4; Sec'y Stat. Ex. A, Note at p. 2.) Petitioner failed to make payment on the Note as agreed. (Sec'y Stat. ¶ 5.) As a result, and in accordance with 24 C.F.R. § 201.54, TMI Financial, Inc. assigned the Note to the United States of America. (Sec'y Stat. ¶ 5; Sec'y Stat. Ex. A, Note at p. 2.) The Secretary is the holder of the Note. (*Id.*)

The Secretary has filed a statement alleging that Petitioner is currently in default on the Note and is indebted to the Secretary in the following amounts:

- (a) \$22,253.06 as the unpaid principal balance as of April 30, 2010;
- (b) \$92.73 as the unpaid interest on the principal balance at 5% per annum through April 30, 2010; and
- (c) interest on said principal balance from May 1, 2010 at 5% per annum until paid.

(Sec'y Stat. ¶ 6; Sec'y Stat. Ex. B, Suppl. Decl. of Brian Dillon, ¶ 5.)

A Notice of Intent to Collect by Treasury Offset dated January 27, 2010 was sent to Petitioner. (Sec'y Stat. ¶ 7.) HUD has received payments from Petitioner that total \$20,497.91 (\$6,400.21 via the Treasury Offset Program, and \$14,097.70 via Administrative Wage Garnishments). (Sec'y Stat. ¶ 10.) 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

The Deficit Reduction Act of 1984, 31 U.S.C.A. §3720, provides federal agencies with a means of collecting debts owed to the United States Government. Petitioner bears the initial burden of submitting evidence to prove that the alleged debt is unenforceable or not past due. 24 C.F.R. § 17.152(b). Petitioner disputes that the debt is legally enforceable and she also disputes the amount of the debt.

First, Petitioner claims that the debt is not legally enforceable because, "[m]y lawyer, Larry Gentry, told me I didn't have to pay the loan back once the house was foreclosed." (Letter from Petitioner ("Pet'r's Resp.") dated April 6, 2010.) As support, Petitioner attached a copy of the Master's Report on Sale and Disbursements and Order for Deficiency Judgment issued by the Court of Common Pleas for the State of South Carolina, County of Saluda. (Pet'r's Resp., Attach. Master's Report.) The Secretary argues that "TMI Financial Inc. was named as a defendant in the action by virtue of a subordinate lien against Petitioner's property. Neither TMI

Financial, Inc. nor HUD (TMI's successor-in-interest) received any proceeds from the foreclosure sale of Petitioner's property." (Sec'y Stat. ¶ 9.)

While Petitioner maintains that the debt in question was paid once the house was foreclosed, this Office has consistently held that "[i]n order for Petitioners to be released of liability, the proceeds [from a foreclosure sale] must have been sufficient to satisfy both [junior and senior liens], plus any reasonable expenses associated with the foreclosure sale. Absent a showing that the proceeds equaled or exceeded this amount, Petitioners remain personally liable for payment of the debt." *In re Lula G. Robertson and Gloria Stewart*, HUDBCA No. 88-2939-H457 (Apr. 12, 1998); *See also John Bilotta*, HUDBCA No. 99-A-CH-Y258, dated December 29, 1999 (the Secretary is entitled to separately enforce the debt against Petitioner under the assigned note); and *Kimberly S. (King) Thede*, HUDBCA No. 89-4587-L74 (April 23, 1990) *citing Alan Juel*, HUDBCA No. 87-2065-G396 (January 28, 1986)(If satisfaction of a senior deed of trust through a foreclosure sale prevents a junior trust holder from enforcing a junior trust deed on the same real property, the junior trust holder may collect the debt, now unsecured, by initiating collection efforts based on the obligations in the loan note.)

Therefore, consistent with *Lula G. Robertson*, *Bilotta*, *Thede*, and *Juel*, Petitioner must submit documentary evidence proving that either TMI Financial, Inc. or HUD, as the junior lien holder, received proceeds from the foreclosure sale which were sufficient to satisfy both the senior and junior liens. *See, Id.* In this case, Petitioner failed to submit such evidence. In fact, the evidence submitted by Petitioner instead demonstrates that the proceeds from the foreclosure sale were insufficient to satisfy the senior lien let alone any junior liens. Accordingly, this Office finds that due to Petitioner's lack of proof, Petitioner remains legally obligated to HUD for the debt that is the subject of this proceeding.

Petitioner further claims that the amount of the debt is unenforceable and argues that, "I paid on the loan for 14 months. I know that was interest, but at some point the interest should stop on a long [sic] thats [sic] this old." (Pet'r's Resp. at 2.) Petitioner is responsible for the accumulated interest on the Note by the terms of the Note, which secured the loan. Upon reviewing the language in the Note, it provides, in reference to Petitioner, that: "I/we agree to pay...the principal sum...plus interest at the rate of 14.00 percent per annum from the date the loan is disbursed *until the principal amount is paid in full.*" (emphasis added) (Sec'y Stat. Ex. A, Note, at p. 1., p.2, §INTEREST AFTER MATURITY.) Further, this Office has held: "[i]nterest arises from the unpaid principal. When the principal balance is valid and legally enforceable, so to is the interest that attaches to it." *In re Thomas R. Herrin*, HUDBCA No. 88-2848-H372 (Dec. 9, 1987). Since the alleged debt is valid and legally enforceable, I find, consistent with the terms of the Note that the interest accrued is also valid and enforceable.

As a final point, Petitioner asks this Office to: "find ...some law of limitation to consider this [debt] as paid in full...as you can see I don't make any money as it is. I am really struggling with two children in college and one in middle school." (Pet'r's Resp. at 2.) First, there is no statute of limitation applicable to administrative offset cases. *See* 31 U.S.C. §3716(e)(1). Secondly, while this Office acknowledges Petitioner's financial circumstances, 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.

ORDER

It is hereby **ORDERED**, for the reasons set forth above, that the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset of any federal payments due to Petitioner, to the extent authorized by law.



Vanessa L. Hall
Administrative Judge

August 19, 2010