



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

In the Matter of:

Ronald and Charlene Carocci,

Petitioners.

HUDOA No. 10-H-NY-LL52
Claim No. 7-653185450A

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Pro se

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For the Secretary

DECISION AND ORDER

On February 23, 2010, Petitioners 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 Petitioners 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 23, 2010, Petitioners 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 Petitioners' 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 6, 1982, Petitioners executed and delivered a Retail Installment Contract (“Note”) to Riverview Homes Inc, in the amount of \$14,100, 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 May 12, 2010, ¶ 2; Ex. A, Note.) Contemporaneously, on July 6, 1982, the Note was assigned by Riverview Homes Inc. to Pittsburgh National Bank. (Sec’y Stat. ¶ 4; Note) Petitioners failed to make payment on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54, on April 1, 1986, Pittsburgh National Bank assigned the Note to the United States of America (Sec’y Stat. ¶ 4; Note, p.2)

Petitioners are currently in default on the Note. The Secretary has made efforts to collect this debt from Petitioners, but has been unsuccessful. Petitioners are justly indebted to the Secretary in the following amounts:

- (a) \$3,653.80 as the unpaid principal balance as of February 28, 2010;
- (b) \$2,884.56 as the unpaid interest on the principal balance at 8% per annum through February 28, 2010; and
- (c) interest on said principal balance from March 1, 2010, at 8% 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 Petitioners. (Sec’y Stat. ¶ 6; Dillon Decl. ¶ 5.) Based on a review of Petitioner’s file, it was determined that the incorrect interest rate of 17% was entered in the system when HUD began servicing the account, instead of the default U.S. Treasury rate of 8 %. (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 6.) Therefore, once the interest rate was corrected and the Petitioners’ 52 payments totaling \$12,883.09 were reapplied, the outstanding balance now due from Petitioners is \$3,653.80, plus interest. (*Id.*)

Discussion

Petitioners do not dispute the existence of the debt. Rather, Petitioners claim “This debt was resolved by monthly payments and numberus [sic] federal tax returns more than ten to fifteen years ago. (Pet’r’s Req.) My wife and I am [sic] writing in reference to this debt that was satisfied by us with check payments and income tax offsets from 1987 to 1999.” (Letter from Petitioner (“Pet’r’s Let’r”) dated April 27, 2010.) Petitioners further claim “to date not one penny has been applied to the original \$7,759.67.” (Pet’r’s Let’r.) While Petitioners refer to certain phone conversations that they claim would further support their position, they failed to submit thereafter the necessary documentary evidence to sufficiently support their claims even after being twice ordered to do so. (Notice of Docketing, Order, & Stay of Referral, dated February 24, 2010. Order, dated March 25, 2010.) The Secretary, on the other hand, provided a copy of Petitioners Audit Reconstruction Report in which it showed Petitioners payments

towards the subject debt and further validated that such payments were applied towards the balance of the debt that is the subject of this proceeding. (Sec'y Stat. Ex. B, Dillon Decl., Ex. A, pp.1-10.) The record not only shows that Petitioners' payments were applied to the remaining balance of the subject debt, but it also proves that a previously incorrect interest rate of 17% imposed against Petitioners was later corrected to reflect the default U.S. Treasury rate of 8%. (Sec'y Stat., Ex. B, Dillon Decl., ¶ 6.) Thus, the Secretary has submitted sufficient documentary evidence to establish the debt as enforceable and past due. Without any documentary evidence presented by Petitioners to refute the evidence presented by the Secretary, the Petitioners' claim fails for lack of proof. This Office has consistently held 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). Therefore, Petitioners remain legally obligated to pay the subject debt in the amount claimed by the Secretary.

Petitioners also claim "It has been over the ten year period for this debt." (Pet'r. Let'r, p. 5.) However, the collection of this debt is not barred by the statute of limitations under 31 U.S.C. § 3716 (c)(1). The governing statute in 31 U.S.C. § 3716 (e)(1) was amended in 2008 to eliminate the ten-year limitation.^[1] The regulation, 24 CFR §17.160, implementing the statute is therefore superseded by the amended statute under 31 USC § 3716 (e)(1). As a result, no statute of limitations applies in this case.

Finally, Petitioners state: "[S]ince 1998, my wife and I are on a fixed monthly income, and "we are barely able to pay our bills and any adverse decision [sic] will put undo [sic] hardship on us. (Id.) 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 consider any settlement offer on behalf of HUD, 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.

^[1] On May 22, 2008, 31 U.S.C. 3716 (e)(1) was amended in Public Law No. 110-234, § 14219 to now state: Elimination of statute of limitations applicable to collection of debt by administrative offset.

ORDER

Based upon the foregoing, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioners 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**. Therefore, 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 Petitioners.



Vanessa L. Hall
Administrative Judge

August 20, 2010