



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

In the Matter of:

Tracey M. Sandell,

Petitioner

HUDOA No. 10-H-NY-LL73
Claim No. 7-800799240A

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Pro se

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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”) 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 March 8, 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. *See* 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 March 9, 2010 until the issuance of a written decision by the administrative judge. *See* 24 C.F.R. § 17.156.

Background

On July 24, 1996, Petitioner executed and delivered a Retail Installment Contract – Security Agreement (“Note”) to CMH d/b/a Cascades Village (“CMH” or the “lender”) in the

amount of \$33,975.92, which was insured against default 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 12, 2010, ¶ 2, Ex. A.) Contemporaneously, on July 24, 1996, the Note was assigned by CMH d/b/a Cascades Village to Vanderbilt Mortgage and Finance, Inc. (*Id.* at ¶ 3, Ex. A, pp. 1, 4.)

Petitioner failed to make payment on the Note as agreed. (*Id.* at ¶ 4.) Consequently, in accordance with 24 C.F.R. § 201.54, on October 14, 1998, Vanderbilt Mortgage and Finance, Inc. assigned the Note to the United States of America. (*Id.*) The Secretary is the holder of the Note on behalf of the United States of America. (*Id.*, Ex. B.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (*Id.* at ¶ 5; Ex. C, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated October 8, 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) \$12,219.54 as the unpaid principal balance as of October 8, 2010;
- (b) \$8,071.38 as the unpaid interest on the principal balance at 5% per annum through October 8, 2010; and
- (c) interest on the principal balance from October 9, 2010 at 5% per annum until the debt is paid in full.

(Sec'y Stat., ¶ 5; Dillon Decl., ¶ 4.) A Notice of Intent to Collect by Treasury Offset dated February 23, 2010, was sent to Petitioner. (Sec'y Stat., ¶ 6.)

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 states that the subject debt is not legally enforceable against Petitioner because Clayton Homes ("CMH") used "undue influence and predatory lending practices in order to consummate the contract for mortgage" and "as a result of [its] dishonest and illegal practices, benefitted financially and turned any los[s]es over to . . . HUD." (Petitioner's Documentary Evidence ("Pet'r Ltr."), filed August 9, 2010.)

As support, Petitioner first argues that CMH should not have allowed Petitioner to execute the Note because "[a]t the time the contract was executed, [Petitioner] was 19 years old without any formal rental history[;] [and][Petitioner] was too inexperienced to appreciate the commitments and obligations of the contract." (Pet'r Ltr., p. 2.) However, beyond Petitioner's allegations that such predatory practices were utilized, Petitioner failed to submit any documentary evidence in support of her argument that the use of these practices would render the alleged debt to be unenforceable.

In response, the Secretary argues that “[w]hile Petitioner attempts to describe herself as a naïve and inexperienced 19-year old whose lack of “any formal rental history” put her at a disadvantage, the credit application she submitted in order to convince the lender that she was eligible for a loan tells a different story.” (Sec’y Stat., ¶ 8.) As support, the Secretary submitted a copy of a letter from Petitioner’s landlord that was included in Petitioner’s loan file submitted to HUD. (Dillon Decl., Ex. A.) In this letter, the landlord states that Petitioner had been “an excellent tenant for the last two years.” (*Id.* at ¶ 9; Dillon Decl., ¶ 6, Ex. A.) The letter further states that Petitioner’s rent “was always paid on time.” (*Id.* at ¶ 9; Dillon Decl., ¶ 6, Ex. A.) Upon reviewing the letter in question it is apparent that the intent was to represent Petitioner as a reliable tenant who understood her responsibility as an adult and who had an impressive two-year rental history unmarred by late rental payments. Without sufficiently persuasive evidence from Petitioner to refute or disprove the Secretary’s position that Petitioner was not naïve and inexperienced, Petitioner’s claim that credit should not have been extended to her due to undue influence fails for lack of proof.

Second, Petitioner states that CMH should have never extended credit to her because she did not meet the income eligibility requirements and as such the debt is unenforceable. Petitioner further states, as support, “There was a reasonable suspicion that a 19 year old single mother with a job that paid \$9.00 per hour would not qualify for a mortgage.” (Pet’r Ltr.) Petitioner also contends that CMH should have known that her child support income of \$217.00 per month, which CMH used to qualify her for the loan, was temporary and would cease on her 20th birthday, because she provided CMH with a copy of her parent’s divorce decree which “shed light on the terms of that income.” (*Id.*) Petitioner further argues that CMH should have included an increase in Petitioner’s monthly lot rent of \$99 in determining her debt ratio, and more specifically states:

“Additionally, lot rent was also used in determining my total debt ratio. At the time the lot rental agreement was signed, the lot rent was \$99. I asked the representative to elaborate on the lot increase that was stipulated on the lease and was told it would not increase any[] more than four to six dollars. When I asked to get that in writing[,] I was told that it was not necessary and that I did not need to worry about it.” (*Id.*)

In response, the Secretary disputes that there was a reasonable suspicion that a 19-year old single mother with a job that paid \$9.00 per hour would not qualify for a mortgage: “The loan file submitted to HUD contains a memo from Claire’s Stores, Inc., which indicates that Petitioner had been employed for almost two years, had been promoted twice, was currently a manager at [its] Hollywood mall location and was an excellent employee.” (Dillon Decl., ¶ 8, Ex. B.) In addition to Petitioner’s income from employment with Claire’s Stores, Inc. of \$1,351.00 per month reported in Petitioner’s credit application, Petitioner also received child support of \$217.00 per month. (Sec’y Stat., ¶ 11, Dillon Decl., ¶ 9, Ex. C.) The Secretary acknowledges “[w]ithout the child support income, Petitioner would not have qualified for the loan.” (Sec’y Stat., ¶ 12; Dillon Decl., ¶¶ 9-10.)

However, the Secretary argues that the loan file does not contain any information with which CMH would have been able to verify that the child support income would cease in two months, on Petitioner's 20th birthday. The loan file also does not contain a copy of the Petitioner's parents' divorce decree that Petitioner references in her documentary evidence, or the "Marital Separation Agreement" submitted by Petitioner provided to this Office. (Sec'y Stat., ¶ 14, Dillon Decl., ¶ 10.) Moreover, even if the "Marital Separation Agreement" were included in the loan file, it would not prove that the child support payments were temporary, because the "Marital Separation Agreement" only states that Petitioner's father was to cease making child support payments when Petitioner had her own permanent residence away from her mother's, which had happened two years earlier. (Sec'y Stat., ¶ 16, Dillon Decl., ¶ 10.) Finally, the Secretary acknowledges that "Petitioner is correct in her assertion that the monthly lot rent of \$99 was used in determining her total fixed expenses to debt ratio[,] and that the lot Rental Agreement only covered a one year period and was subject to annual increases." (Dillon Decl., ¶ 11; see also Sec'y Stat., ¶ 17.)

But, the Secretary finally asserts that "[n]o other documentation regarding this matter was required by the lender relative to FHA mortgage insurance requirement." (Sec'y Stat., ¶ 17; Dillon Decl., ¶ 11.) While it appears that Petitioner requested documentation regarding this matter, she did not produce any documentary evidence to prove that the lot increase of her rent or the tentative nature of her child support income rendered her ineligible for the income requirement necessary to qualify for the extension of the loan that is the subject of the debt in this proceeding. Without such evidence to substantiate Petitioner's claim, Petitioner remains legally obligated to pay the alleged debt. See *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996) (held that "[a]ssertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due or enforceable.").

Additionally, Petitioner's argument that her age as a 19-year old would not qualify her for a loan also lacks merit. Petitioner was at a valid age to sign and did sign the Note dated July 24, 1996. Even Petitioner acknowledged that she "was of age to sign a contract." (Pet'r Ltr., p.2.) The Restatement (Second) of Contracts § 14 (1981) provides that "Unless a statute provides otherwise, a natural person has the capacity to incur only voidable contractual duties until the beginning of the day before the person's eighteenth birthday. In Florida, under Fla. Stat. Ann. § 743.07(1), the disability of nonage is hereby removed for all persons in this state who are 18 years of age or older, and they shall enjoy and suffer the rights, privileges, and obligations of all persons 21 years of age or older except as otherwise excluded by the State Constitution immediately preceding the effective date of this section and except as otherwise provided in the Beverage Law.

Petitioner's signature on the Note indicates that she, as a 19-year old woman, agreed to be bound by the terms of the Note and had an obligation to repay the alleged debt according to the terms of the Note. See *Cronebaugh v. Van Dyke*, App. 5 Dist., 415 So.2d 738, 741 (1982), petition for review denied 426 So.2d 25 (1983) (A person 18 years of age or older has the right to receive, and to assume the management of, his estate, to contract and to be contracted with and to sue and to be sued.) Accordingly, in this case, regardless of the issues raised by Petitioner, Petitioner, at a valid age to execute a contract, applied for the subject loan while representing that she had sufficient rental and employment history and income to repay the loan, and to obtain the

benefit of the loan. (See also Dillon Decl., ¶ 12.) Thus, I find that the alleged debt remains to be owed by Petitioner.

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.

/s/ original
Vanessa L. Hall
Administrative Judge

December 17, 2010