



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

In the Matter of:

**Crezelle Ivory**

Petitioner

HUDOA No. 10-M-CH-LL08  
Claim No. 7-210061750A

Crezelle Ivory  
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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 to recover a claimed past-due, legally enforceable debt owed to HUD by referring the matter to the U.S. Department of the Treasury.

Petitioner requested a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD in this case. The Office of Appeals has been designated to conduct a hearing to determine whether the alleged debt 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 December 2,

2009, until the issuance of a written decision by the Administrative Judge. See 24 C.F.R. § 17.156.

### **Background**

On or about April 1, 2007, Petitioner executed and delivered to HUD a subordinate note ("Sub Note ") and security instrument to secure a partial claim paid on her behalf by the Secretary to pay the arrearages on her primary FHA-insured mortgage and avoid the foreclosure of her home. (Secretary's Statement ("Sec'y Stat."), filed March 25, 2010, ¶ 2, Ex. 1) The original amount to be repaid under the Sub Note was \$9,990.00 and under the terms and conditions of the Sub Note, it became due and payable due when: the original FHA mortgage matures; when the borrower pays the primary note ("Prime Note") in full; when the maturity date of the Prime Note has been accelerated; when the Prime Note or related security instrument is no longer insured by the Secretary; or when the property is no longer occupied by the purchaser as his or her principal residence. (*Id.* at ¶ 2.)

On, or around August 5, 2007, the FHA mortgage insurance on the original Note and security instrument was terminated as the mortgagee indicated the mortgage was paid in full. (Sec'y Stat. ¶ 3, Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center, HUD ("Dillon Decl."), ¶ 4.) Therefore, and pursuant to the terms and conditions of the Sub Note, payment is due in full. (Sec'y Stat. ¶ 4.)

HUD has attempted to collect the amounts due under the Sub Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 5, Dillon Decl. ¶ 5.) Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$9,990.00 as the unpaid principal balance as of November 30, 2009;
- (b) \$99.92 as the unpaid interest on the principal balance at 3% per annum through November 30, 2009; and
- (c) interest on said principal balance from December 1, 2009 at 3% per annum until paid.

(Sec'y Stat., ¶ 6, Ex. 2, Dillon Decl., ¶ 5.) On or about October 26, 2009, a Notice of Intent to Collect By Treasury Offset was sent to Petitioner by HUD. (Sec'y Stat., ¶ 7, Ex. 2, Dillon Decl., ¶ 6.)

### **Discussion**

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides federal agencies with the remedy of administrative offset of federal payments for the collection of debts owed to the United States Government. In these cases, 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).

On December 2, 2009, this Office issued a Notice of Docketing, Order, and Stay of Referral ("Order") ordering Petitioner to file documentary evidence proving that Petitioner is not indebted to HUD in this matter or that the debt is otherwise unenforceable and not past due. (Notice of Docketing, Order, and Stay of Referral, dated December 2, 2009.)

On February 18, 2010, this Office again ordered Petitioner to file documentary evidence, in accordance with 24 C.F.R. § 17.152(b), proving that all or part of the alleged debt in this case is not enforceable or not past due. (Order, dated February 18, 2010.) The Order further stated that: "Failure to comply with this Order shall result in a decision based on the documents in the record of this proceeding." (*Id.*)

On March 1, 2010, Petitioner filed a document titled "Discharge of Mortgage," dated April 3, 2008, in response to the court's order of February 18, 2010, ordering Petitioner to file documentary evidence in support of her claim that she does not owe the debt alleged by HUD in this matter.

On March 4, 2010, this Office ordered the Secretary to file documentary evidence proving that the debt in question was due and legally enforceable. In response, on March 25, 2010, the Secretary submitted the Secretary's Statement setting forth documentary evidence to prove that Petitioner is indebted to HUD in the amounts claimed by the Secretary, including the sworn declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center. (Sec'y Stat., ¶¶ 1-9, Ex. 2.)

For Petitioner not to be held liable for the full amount of the alleged debt there must either be a release in writing from the lender specifically discharging Petitioner's obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release. *Terri A. Kutz*, HUDOA No. 09-M-NY-KK08 (March 20, 2008); *Beckie Thompson*, HUDBCA No. 04-D-CH-EE015 (September 20, 2004); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

In response to the February 18, 2010 Order, Petitioner submitted a "Discharge of Mortgage" letter from Michigan State Housing Development Authority, that merely acknowledged that the Prime Note was paid in full as of April 3, 2008. (Petitioner's Discharge of Mortgage letter, filed March 1, 2010.) When the Prime Note was paid in full, the Sub Note was due immediately. Thus, although the Prime Note was paid in full, Petitioner has failed to provide documentary evidence showing that the Sub Note was paid, or that a release was given to Petitioner, relieving her of her debts to HUD. Petitioner has therefore, not met her burden to prove that the debt in this case is not past-due or legally enforceable. In the absence of documentary evidence to support Petitioner's position, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner as set forth in the Notice of Intent.

Petitioner has, therefore, not met her burden to prove that the debt in this case is not past-due or legally enforceable. In the absence of documentary evidence to support Petitioner's position, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner as set forth in the Notice of Intent to Collect by Treasury Offset.

**ORDER**

For the reasons set forth above, I find the debt that is the subject of this proceeding to be 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 federal payments due Petitioner.



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H. Alexander Manuel  
Administrative Judge

April 20, 2010