



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

In the Matter of:

Kevin C. Bluemel,
Petitioner

HUDOA No. 10-M-CH-LL113
Claim No. 7-80203433 OA

Kevin C. Bluemel
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Pro se

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For the Secretary

DECISION AND ORDER

Kevin C. Bluemel ("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 March 18, 2010, Petitioner made a 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 March 30, 2010. (Notice of Docketing, Order and Stay of Referral ("Notice"), Mar. 30, 2010.)

Background

Petitioner executed a Note dated September 19, 1997 in the amount of \$25,000.00. (Secretary's Statement ("Sec'y Stat."), Ex. 1, Note.) After Petitioner defaulted on the Note, the Note was assigned to HUD by U.S. Bank Trust National Association under the regulations governing the Title I Insurance Program. (Sec'y Stat., Ex. 2, Declaration of Brian Dillon ("Dillon Decl."), ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but has been unsuccessful. (Sec'y Stat., ¶ 2; Dillon Decl. ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$24,697.46 as the unpaid principal balance as of March 30, 2010;
- (b) \$14,147.33 as the unpaid interest on the principal balance at 5% per annum through March 30, 2010; and
- (c) interest on said principal balance from March 1, 2010, at 5% per annum until paid.

(Dillon Decl. ¶ 4.) A Notice of Intent to Collect by Treasury Offset dated February 15, 2010 was sent to Petitioner. (Sec'y Stat. ¶ 4; Dillon Decl. ¶ 5.)

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 March 29, 2010, Petitioner's Determination Review Request for HUD Claim N. 7-802034330A ("Hearing Request") was filed with this Office. In the Hearing Request, Petitioner stated, "I believe that I do not owe this debt or that it is legally unenforceable, and I intend to present evidence supporting my claim." (Pet'r's Hr'g Req., filed Mar. 29, 2010.) Petitioner also requested an extension of time until April 21, 2010 to submit his evidence to this Office. (*Id.*)

On March 30, this Office ordered the Secretary to file his documentary evidence to prove that Petitioner is indebted to HUD in the amount alleged, and that the debt is enforceable and past due. (Notice of Docketing, at p. 2.) On April 29, 2010, the Secretary complied with the order set forth in the Notice of Docketing and filed the Secretary's Statement, which was supported by a copy of the Note and a sworn declaration made by Brian Dillon. (Sec'y Stat., Attachs.)

After receiving the Secretary's documentary evidence, on May 5, 2010, this Office 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 past due or legally enforceable...." (Order ("May Order"), dated May 5, 2010.) The May Order also required Petitioner to file his

evidence “on or before June 4, 2010” and stated that “[f]ailure to comply with this Order may result in a decision based upon the documents in the record of this proceeding.” (emphasis in original) (*Id.*) Petitioner failed to comply with the May Order and on August 31, 2010, this Office again ordered Petitioner to file his evidence “on or before September 30, 2010” and reiterated that “[f]ailure to comply with this Order shall result in a decision based on the documents in the record of this proceeding.” (Order (“August Order”), dated August 31, 2010.) Petitioner did not comply with the August Order.

Despite having been given more than five months after his proposed extension date, Petitioner has not filed any evidence to support his assertion that he does not owe the debt in this case, or that the debt is not past due or legally enforceable. This Office has held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing, Bonnie Walker, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). As Petitioner has failed to file documentary evidence in compliance with the orders of this Office, I find that Petitioner’s argument fails for want of proof. Further, this Office finds a sanction against Petitioner under 24 C.F.R. § 26.4 to be appropriate. 24 C.F.R. § 26.4(a), states that “[t]he hearing officer may sanction a person, including any party or representative for failing to comply with an order...; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.” 24 C.F.R. § 26.4(a) (2010). Therefore pursuant to 24 C.F.R. § 26.4(c), which sets forth the specific sanctions that may be imposed, including “any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party...,” (24 C.F.R. § 26.4(a)) this Office finds that: (1) Petitioner has not met his burden of defense against the Secretary’s allegations; and (2) the debt in this case is past due and enforceable in the amount alleged by the Secretary.

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 payment due Petitioner.



H. Alexander Manuel
Administrative Judge

December 17, 2010