



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

In the Matter of:

First Guaranty Financial Corporation,

Petitioner.

HUDOA No. 10-M-CH-LL134
Claim No. 7-20700680

Rod Thompson, President
First Guaranty Financial Corp.
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Santa Ana, CA 92707

For Petitioner

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77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

On or about April 1, 2010, First Guaranty Financial Corporation ("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. (Demand Notice, dated April 1, 2010.)

On May 11, 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, 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 May 14, 2010.

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 May 11, 2010, Petitioner filed with this Office an appeal in which Petitioner stated, "Please earnestly consider my request to exonerate First Guaranty Financial on this now fairly exorbitant liability." (emphasis in original) (Petitioner's Request for a Hearing ("Pet'r Hr'g Req."), filed May 11, 2010.) On August 8, 2010, this Office ordered Petitioner to file documentary evidence to prove that the alleged debt to HUD in this case is not owed, past due or legally enforceable against Petitioner. (Order, dated August 8, 2010.) In response to the Order, Petitioner filed a letter "request[ing] that the Secretary provide copies of all documents relating to this alleged debt to Petitioner." (Petitioner's Motion to Compel ("Pet'r Mot."), filed August 18, 2010.) In the Motion, Petitioner stated, "For us to provide any Documentary Evidence, we would have first needed the documentation from the Office of the Secretary that was previously requested seven years prior." (*Id.*)

On August 20, 2010, this Office granted Petitioner's Motion and ordered the Secretary to certify that he has sent Petitioner all documents in his possession that were relied upon in his determination that Petitioner owes the alleged debt to HUD in this case. (Order, dated August 20, 2010.) This Office also ordered Petitioner to file documentary evidence to prove that Petitioner is not indebted to HUD, or that the alleged debt in this case is not past due or legally enforceable against Petitioner. (*Id.*) On September 20, 2010, the Secretary complied with the August 20th Order and filed a Notice of Compliance, certifying that he sent the above-referenced documents to Petitioner. (Notice of Compliance, filed September 20, 2010.) Petitioner, on the other hand, failed to comply with the August 20th Order to file documentary evidence.

After receiving the Secretary's Notice of Compliance, on November 10, 2010, this Office, again, ordered Petitioner to file documentary evidence, "on or before December 1, 2010," to prove that Petitioner is not indebted to HUD, or that the alleged debt in this case is not past due or legally enforceable against Petitioner. (emphasis in original) (Order, dated November 10, 2010.) The November 10th Order also 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.*)

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.

Furthermore, I find 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 Petitioner has not met its burden of proof, and that the debt in this case is past due and enforceable against Petitioner 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

February 3, 2011