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

In the Matter of: **Mickie Rogers,** Petitioner	HUDOA No. 10-M-CH-LL139 Claim No. 7-652769580B

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For the Secretary

DECISION AND ORDER

On or about May 21, 2010, 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 May 20, 2010, Petitioner filed a request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The administrative judges of this Office 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, referral of the debt to the U.S. Department of the Treasury for administrative offset was temporarily stayed by this Office on May 21, 2010.

Background

On December 19, 1984, Petitioner executed and delivered to Southwest Exteriors, Inc. a Retail Installment Contract ("Note") in the amount of $7,200.00 to finance home improvements to her home. (Secretary's Statement ("Sec'y Stat."), filed June 9, 2010, ¶ 1, Ex. 1.) When Petitioner defaulted on the Note, the Note was assigned to the Secretary pursuant to the provisions of the Title 1 Insurance Program. (*Id.* at ¶ 2; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated June 8, 2010, ¶ 3.)

Petitioner is currently in default on the Note. HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 3.) Petitioner is alleged to be indebted to the Secretary in the following amounts:

(a) $2,437.76 as the unpaid principal balance as of May 30, 2010;
(b) $2,120.20 as the unpaid interest on the principal balance at 7% per annum through May 30, 2010; and
(c) interest on said principal balance from June 1, 2010 at 7% per annum until paid.

(Sec'y Stat., ¶ 4; Dillon Decl., ¶ 4.) A Notice of Intent to Collect by Treasury Offset, dated February 1, 2010, was sent to Petitioner by HUD. (Sec'y Stat., ¶ 5, Ex. 3.)

Discussion

31 U.S.C. §§ 3716 and 3720A authorize federal agencies to collect debts owed to the United States Government by means of administrative offset. The burden of proof is on the alleged debtor to show that the debt claimed by the Secretary is unenforceable or not past due. 24 C.F.R. § 17.152(b). Failure to provide documentary evidence to meet this burden shall result in a dismissal of the debtor's request for review. *Id.*

Petitioner has acknowledged that she signed the Note which is the subject of these proceedings. However, she argues that (1) the offset is barred by the statute of limitations; (2) the debt is the obligation of her former husband; (3) her non-debtor spouse should not have his taxes offset; (4) the foreclosure sale of her home has extinguished her indebtedness; and (5) a title search was allegedly not done.

First, Petitioner suggests the offset is barred by the statute of limitations by stating that this loan was made over twenty-five years ago: "I have no record or information regarding this claim or loan. This was more than 25 years ago." (Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed May 20, 2010.) However, the pertinent Federal statute applicable to collection of debts by administrative offset clearly provides that "[a]fter trying to collect a claim from a person under § 3711(a) of this title, the head of an executive . . . agency may collect the claim by

administrative offset." 31 U.S.C. § 3716(a) (2008). Furthermore, this statute provides that "[n]otwithstanding any other provision of law, regulation, or administrative limitation, no limitation on the period within which an offset may be initiated or taken pursuant to this section shall be effective." 31 U.S.C. § 3716(e)(1) (2008). This means that there is no time limitation restricting the right of the Government to collect this debt by means of administrative offset. Therefore, irrespective of a twenty-year delay in seeking to enforce collection of this debt, I find that the Secretary is not barred by statute of limitations from collecting the alleged debt by means of administrative offset.

Second, Petitioner claims that the debt at issue is the obligation of her former husband, Edward Redden: "I believe the above mentioned claim or loan paper work and payment records were left in the possession of Edward Redden. On June 15, 1985[,] I was physical[ly] and emotional[ly] removed from the property that apparently holds this claim or loan. He retained all property and money. . . Please contact Edward Redden regarding this matter." (Pet'r Hr'g Req.)

Although Petitioner is now divorced, as a co-signor on the Note, Petitioner remains jointly and severally liable, along with her ex-husband, for repayment of this debt. (Sec'y Stat., Ex. A.) "Liability is characterized as joint and several when creditors may sue the parties to an obligation separately or together." *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). The Secretary may therefore proceed against any co-signor for the full amount of the debt. Petitioner remains liable for the debt unless and until she obtains a release in writing from the lender specifically discharging Petitioner's obligation, or pays valuable consideration, accepted by the lender, that would indicate an intent to release. *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). Petitioner has submitted no evidence to establish the existence of a valid release, and remains legally obligated for the repayment of this loan.

Furthermore, "where a property settlement or divorce decree purports to release one spouse from a joint obligation, the claims of the existing creditors against that spouse are *not* affected unless the creditors were parties to the action." *In the Matter of Deborah Gage*, HUDBCA No. 86-1727-F286 (January 14, 1986); *see also* 27B C.J.S. Divorce § 251 (4) (1989); 63 A.L.R. 3d 373, 403-04 (1975). The divorce decree only determined the rights and liabilities as between Petitioner and her ex-husband. *Kimberly S. King (Theide)*, HUDBCA No. 89-4587-L74 (April 23, 1990). Petitioner may be able to enforce the divorce decree against her ex-husband in state or local court to recover monies paid to HUD by her to satisfy this obligation. However, Petitioner remains jointly and severally liable on the contract at issue, and the Secretary has the right to enforce the obligation against her individually. *Linwood R. Shearin*, HUDOA No. 07-M-NY-HH83 (November 21, 2007).

On a related note, Petitioner asserts that her credit report includes an address that may belong to her ex-husband: "[T]he credit report has an address that I believe was Edward Redden and his second wife address; I never lived there." (Petitioner's Letter ("Pet'r Sept. Ltr."), filed September 1, 2010.) It is Petitioner's responsibility to contact the relevant credit bureau to correct the error in her credit report.

Third, Petitioner objects to her non-debtor spouse having his taxes offset: "You took my present husband's IRS refund this year of $321.00 not noted (that should be refunded)." (Pet'r Sept. Ltr.) The Secretary responds, "Petitioner's correct remedy is to contact the [Internal Revenue Service] [("]IRS[")] to obtain information pertaining to an injured spouse allocation." (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 6.) As the Secretary states, it is Petitioner's responsibility to contact the IRS "to inquire as to the process for filing an IRS Form 8379 Injured Spouse Allocation." (Dillon Decl., ¶ 6.)

Fourth, Petitioner questions the enforceability of the debt based on the belief that a foreclosure sale of her home has extinguished her indebtedness: "This was a home improvement loan tied to the property at Route 1 – Box 26, Nevada, Texas 75073. Payment of this loan should have been paid in full when the property went into foreclosure and sold." (Petitioner's Letter ("Pet'r Jul. Ltr."), filed July 1, 2010; Pet'r Sept. Ltr.) Petitioner did not, however, provide documentary evidence to show that she was released from her legal obligation to pay the subject debt because the property went into foreclosure. Even had Petitioner presented such evidence, she would still be required to prove further that the proceeds from the foreclosure were applied towards the payment of the subject debt. This Office has consistently maintained that "[i]n order for Petitioners to be released of liability, the proceeds [from a foreclosure sale] must have been sufficient to satisfy both [junior and senior liens], plus any reasonable expenses associated with the foreclosure sale. Absent a showing that the proceeds equaled or exceeded this amount, Petitioners remain personally liable for payment of the debt." *In re Lula G. Robertson and Gloria Stewart*, HUDBCA No. 88-2939-H457 (Apr. 12, 1998); *See also John Bilotta*, HUDBCA No. 99-A-CH-Y258, dated December 29, 1999 (the Secretary is entitled to separately enforce the debt against Petitioner under the assigned note); and *Kimberly S. (King) Thede*, HUDBCA No. 89-4587-L74 (April 23, 1990) *citing Alan Juel*, HUDBCA No. 87-2065-G396 (January 28, 1986) (If satisfaction of a senior deed of trust through a foreclosure sale prevents a junior trust holder from enforcing a junior trust deed on the same real property, the junior trust holder may collect the debt, now unsecured, by initiating collection efforts based on the obligations in the loan note)).

Therefore, consistent with *Lula G. Robertson*, *Bilotta*, *Thede*, and *Juel*, Petitioner must submit, in this case, documentary evidence to prove that either Southwest Exteriors, Inc. or HUD, as the junior lien holder, received proceeds from the foreclosure sale that were sufficient to satisfy both the senior and junior liens. Petitioner failed to submit such evidence in this case. Accordingly, this Office finds that due to Petitioner's lack of proof that the proceeds from the foreclosure paid off the subject debt, Petitioner remains legally obligated to HUD for the debt that is the subject of this proceeding.

Finally, Petitioner argues that the debt is unenforceable because a title search was allegedly not performed: "I believe the title company should have run a title search on this property. This should have been resolved 25 years ago with the Mortgage Company and Title Company." (Pet'r Jul. Ltr.; Pet'r Sept. Ltr.) Petitioner, however, became liable for the debt when she signed the Note. This Office has previously held that "[i]n order for Petitioner not to be held liable for the 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." *Franklin Harper*, HUDBCA No. 01-D-

CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986)). Petitioner has provided no documentary evidence to prove that the lender or HUD was a party to a written release or an agreement to release Petitioner from liability. Therefore, I find that Petitioner was not released from liability on her debt to HUD and that the debt is legally enforceable against Petitioner in the amount claimed by the Secretary.

Moreover, Petitioner's obligation to repay the debt is not predicated on proper recordation of the mortgage. *See In re Carol Lynn Hancock*, HUDBCA No. 07-A-NY-AWG17, at p.5 (September 25, 2008.) (finding that the Subordinate Note does not require that Petitioner's obligation to repay the debt to HUD be… "predicated on recordation of a security interest..."); *see also In re Sherry Richards*, HUDOA No. 09-M-NY-KK02, at p.4 (April 28, 2009) ("Petitioner remains legally obligated for the repayment of the Note, regardless of the existence of a recorded lien, deed of trust, or mortgage"). Instead, Petitioner's obligation is based on the terms of the Note executed by Petitioner. Upon reviewing the Note, I find that the terms of the Note remain silent regarding whether Petitioner's obligation to repay the loan is predicated on the recordation of a security interest. But, the Note does explicitly state, "By signing below, you promise to pay to us, or our order, $7200.00 together with interest on the unpaid principal balance until paid at the rate of 16.50% per annum, according to the Payment Schedule at our address, as stated above." (Sec'y Stat., Ex. 1.) Consistent with *Carol Lynn Hancock* and *Sherry Richards*, I find that Petitioner likewise remains legally obligated to repay the Note regardless of the improper recordation of the lien or mortgage.

In conclusion, Petitioner has failed to file sufficient documentary evidence to support her argument that the debt that is the subject of this proceeding is not past due or is unenforceable, and has therefore failed to meet her burden of proof as set forth in 24 C.F.R. § 17.152. In the absence of sufficient documentary evidence filed by Petitioner, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary.

ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset is VACATED. For the reasons stated above, it is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset to the extent authorized by law.

H. Alexander Manuel
Administrative Judge

September 29, 2010