



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

In the Matter of:

JAMES AND CONNIE MOSS,

Petitioners

HUDOA No. 10-M-CH-LL143
Claim No. 7-806854310A
7-806854310B

DECISION AND ORDER

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

On May 26, 2010, this Office received from Petitioners a hearing request 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 Petitioners' hearing request, referral of the debt to the U.S. Department of the Treasury for administrative offset was temporarily stayed by this Office on June 15, 2010, until the issuance of a written decision by the Administrative Judge. *See* 24 C.F.R. § 17.156.

Background

On October 13, 1995 Petitioners executed and delivered to Pulaski Mortgage Company an installment note in the amount of \$24,924.00 for a home improvement loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y Stat."), filed July 16, 2010, ¶ 2.) The Note was subsequently assigned by Pulaski Mortgage Company to Federal National Mortgage Association.

(*Id.*) Petitioners failed to make payments as agreed in the note and consequently, Pulaski Mortgage Company assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54. (Sec’y Stat. ¶ 3.)

The Secretary has made efforts to collect from Petitioner other than by administrative wage garnishment but has been unsuccessful. (Sec’y Stat. ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$12,300.31 as the unpaid principal balance as of May 30, 2010;
- (b) \$2,177.41 as the unpaid interest on the principal balance at 4% per annum through May 30, 2010;
- (c) \$3,749.28 as the unpaid penalties and administrative costs as of May 30, 2010; and
- (d) interest on said principal balance from May 30, 2010, at 4% per annum until paid.

(Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center, HUD (“Dillon Decl.”), dated June 29, 2010, ¶ 4.)

A Notice of Intent to Collect by Treasury Offset dated March 22, 2010 was sent to Petitioners. (Sec’y Stat. ¶ 6.) Petitioners have requested a repayment arrangement of \$100.00 per month, but this repayment plan is unacceptable to the Secretary. (Sec’y Stat. ¶ 7.)

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 26, 2010, this Office received a letter from Petitioner that was deemed to be a Request for Hearing. (Petitioners’ Hearing Request (Pet’rs’ Hr’g Req.), filed May 26, 2010.) In the letter, Petitioners do not challenge whether the debt is past due or legally enforceable. Instead Petitioners state:

“We are writing in regards ...to the debt that we owed...[and] we do know that we owe this debt and want to work out a payment arrangement to take care of it however we are still a one home income [sic] in this house at this time....”

(Pet’r’s Hr’g Req.)

On July 2, 2010, and September 29, 2010, this Office ordered Petitioners to file documentary evidence proving that all or part of the alleged debt in this case is not past due or not legally enforceable against Petitioners. (Order, issued September 29, 2010.) The September

29, 2010 Order also stated that "Failure to comply with this order may result in a decision based on the documents in the record of this proceeding." (emphasis in original)

Petitioners failed to respond to both the July 2, 2010 and the September 29, 2010 Orders, and are therefore in violation of 17 C.F.R. §26.4(a)¹. Pursuant to 17 C.F.R. § 26.4(c)², this Office finds Petitioners have not met their burden of disproving the Secretary's allegations against them. This Office has also 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)). Since Petitioners have not offered any evidence that would prove that the debt is unenforceable or not past due, I find that Petitioners' argument fails for want of proof.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioners 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 Petitioners.



H. Alexander Manuel
Administrative Judge

December 8, 2010

¹ 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, rule, or procedure governing the proceeding; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing."

² 17 CFR §26.4(c) 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 . . ."