



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

In the Matter of:

KAYLEEN BURGESS

Petitioner

HUDOA No. 10-M-CH-LL15
Claim No. 7-210059520A

Kayleen Burgess
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For Petitioner

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For the Secretary

DECISION AND ORDER

On February 2, 2010, Petitioner made a request for 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 debt allegedly owed 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 February 2, 2010, until the issuance of a written decision by the Administrative Judge. *See* 24 C.F.R. § 17.156.

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).

Background

On or about January 12, 2005, Petitioner executed and delivered to HUD a Subordinate Note ("Note") to secure a partial claim in the amount of \$7,200.00 paid by the Secretary to pay the arrearages on her primary FHA-insured mortgage and avoid the foreclosure of her primary residence. (Secretary's Statement ("Sec'y Stat."), filed March 12, 2010, ¶ 1; Ex. 1.) The Secretary paid this partial claim pursuant to 24 C.F.R. § 203.371. (*Id.*)

The Note provides that the loan becomes due upon the occurrence of certain events or conditions. (Sec'y Stat., ¶ 2; Ex. 1.) One such condition is when the borrower pays the primary note in full. (*Id.*) On or about June 26, 2006, the FHA mortgage insurance on the original Note was terminated, as the mortgage was paid in full, thus making the Note immediately due. (*Id.*; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated February 12, 2010, ¶ 4.)

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., ¶ 2; Dillon Decl. ¶ 5.) Petitioner is alleged to be indebted to the Secretary in the following amounts:

- (a) \$7,200.00 as the unpaid principal balance as of January 30, 2010;
- (b) \$198.00 as the unpaid interest on the principal balance at 3% per annum through January 30, 2010; and
- (c) interest on said principal balance from February 1, 2010, at 3% per annum until paid.

(Sec'y Stat., ¶ 3; Dillon Decl., ¶ 5.) On or about January 4, 2010, a Notice of Intent to Collect by Treasury Offset was sent to Petitioner by HUD. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 6.)

Discussion

On February 2, 2010, this Office received a letter from Petitioner that was deemed to be a Request for Hearing. (Petitioner's Request for Hearing, filed February 2, 2010.) In the letter, Petitioner stated, "The property that was sold on 6/24/2003 was completely paid for including all liens and the pay-off for the loan including all debts associated with this property. Please remove all debts associated with this property as they have been fulfilled with the approved pay-off by the lender in 2003." (*Id.*) Apart from Petitioner's Request for Hearing, however, Petitioner has not filed documentary evidence to support her claim that she paid this alleged debt to HUD.

This Office has also ordered the Secretary to file documentary evidence proving that the Petitioner's alleged debt to HUD is enforceable and past due. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated February 2, 2010.) The Secretary filed the Secretary's Statement, setting forth documentary evidence in support of his claim that Petitioner owes this debt to HUD. (Sec'y Stat.; Dillon Decl.)

In addition, according to the Secretary, "Petitioner has acknowledged that she owes this debt to the Secretary and has requested additional time to file a title claim." (Sec'y Stat., ¶ 6, Ex. 3.) In her email addressed to this Office on February 23, 2010, Petitioner stated,

"For the proof of pay off on the deed of trust created on 01/12/2005 for \$7,200 I am finding that this pay off may have not been paid due to an over look with my title company. I am in the process of collecting more information and making a claim against Chicago Title Insurance Company. I am asking for a continuance from HUD until I receive the funds to fulfill this dept [sic]."


In response, the Secretary asserts that "without commenting on the merits of Petitioner's claim against her title company, the issue at hand is whether the debt owed is past due and legally enforceable and any claim she may have against her title company is unrelated to her obligation to repay the Secretary." (Sec'y Stat., ¶ 7.) Petitioner has not submitted any documentary evidence to refute the Secretary's argument.

This Office ordered Petitioner to file documentary evidence to prove that the debt in this case is not enforceable or not past due. (Notice of Docketing.) Petitioner failed to respond to the Notice. Petitioner has, therefore, not met her burden to prove that the debt in this case is not past due or legally enforceable. This Office has consistently held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable." Bonnie Walker, HUDBCA No. 95-G-NY-T300, (July 3, 1996). In the absence of documentary evidence to support Petitioner's position that the Note in the amount of \$7,200.00 was paid, 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

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

October 4, 2010