



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

In the Matter of:

ALVIE JOHNSON, JR.,

Petitioner

HUDOA No. 10-M-CH-LL29
Claim No. 7-800155890A

Alvie Johnson, Jr.
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Pro se

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For the Secretary

DECISION AND ORDER

On or about January 27, 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 February 17, 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 22, 2010, until the issuance of a written decision by the Administrative Judge. *See* 24 C.F.R. § 17.156.

Background

On August 20, 1994, Petitioner executed a Retail Installment Contract, Sales and Credit Agreement (“Note”) in the amount of \$14,999.00 to finance certain repairs on his home. (Secretary’s Statement (“Sec’y Stat.”), filed May 3, 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, Ex. 2; Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, HUD Financial Operations Center (“Porter Decl.”), dated April 30, 2010, ¶ 3.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec’y Stat., ¶ 3; Porter Decl., ¶ 4.) Petitioner is alleged to be indebted to the Secretary in the following amounts:

- (a) \$14,364.42 as the unpaid principal balance as of April 30, 2010;
- (b) \$7,407.62 as the unpaid interest on the principal balance at 5% per annum through April 30, 2010; and
- (c) interest on said principal balance from May 1, 2010 at 5% per annum until paid.

(Sec’y Stat., ¶ 4; Porter Decl., ¶ 4.) A Notice of Intent to Collect by Treasury Offset, dated January 27, 2010, was sent to Petitioner by HUD. (Sec’y Stat., ¶ 5; Porter Decl., ¶ 5.)

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 denies that the debt in this case is past-due or legally enforceable. Petitioner states, “This debt is not past-due or not legally enforceable and that I intend to present evidence.” (Petitioner’s Hearing Request (“Pet’r Hr’g Req.”), filed February 17, 2010.) Specifically, Petitioner alleges that payments were deducted from his social security entitlement in the amount of \$141.60 per month from January 3, 2006 to January 3, 2007: “I am enclosing evidence of payments of \$141.60 on 01/03/2006 through 01/03/2007 payable to Dept of Housing & Urban Development. The payments were deducted through my Social Security Benefits.” (*Id.*) Petitioner filed documentary evidence of only eight offset payments made monthly from January 3, 2006 to August 3, 2006, ranging from \$52.40 to \$141.60 each, totaling \$776.00. (*Id.*)

The Secretary acknowledges that “Petitioner has provided evidence of 8 offsets from the Treasury Offset Program to HUD in the amount of \$776.00.” (Porter Decl., ¶ 6.) While the Secretary has failed to “attach[] as Exhibit A a Title I Defaulted Loans Case Reconstruction Report that reflects the 8 Treasury offsets,” the Secretary declares through the sworn Declaration of Kathleen M. Porter that these eight offset payments are reflected in the outstanding balance

noted above. (*Id.*) Clearly, the unpaid principal balance of \$14,364.42 as of April 30, 2010 indicates that although all payments received by HUD related to this debt have been posted to Petitioner's account, the payments have not extinguished Petitioner's entire debt in this case.

This Office has ruled that in order to be discharged from his obligation to repay the alleged debt, Petitioner must have been issued a release, in writing, from HUD. *In re Juanita Mason*, HUDOA No. 08-H-NY-AWG70 (December 8, 2008). Petitioner has not filed any such release in this case and has failed to provide sufficient evidence to show that the alleged debt to HUD in this case has been repaid in full. In the absence of a release from HUD discharging Petitioner from his obligation to repay the debt, this Office finds that Petitioner remains indebted to HUD.

Moreover, on two separate occasions since Petitioner's Hearing Request, 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, Order and, Stay of Referral, dated February 22, 2010; Order, dated May 10, 2010.) The May 10th Order specifically stated, "Failure to comply with this Order may result in a decision based upon the documents in the record of this proceeding." To date, Petitioner has not responded to any of these orders and has failed to provide any documentary evidence.

24 C.F.R §26.4 sets forth specific sanctions that may imposed where petitioner has failed to comply with this Office's orders to file documentary evidence. One of the sanctions include "any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party . . ." Thus, Petitioner's noncompliance with the Orders issued by this Office also supports finding against Petitioner pursuant to 24 C.F.R §26.4.

Finally, on August 10, 2010, this Office noted that "[t]he Secretary's Statement does not clearly set forth the chain-of-title that resulted in the Department becoming the holder of the [N]ote evidencing the alleged debt in this case," and ordered the Secretary to "file documentary evidence to prove that the alleged debt to HUD in this case is past due and legally enforceable against Petitioner, including proof of chain-of-title in this case." (Order, dated August 10, 2010.) Although the Secretary did not file a copy of the document assigning the Note to HUD, the sworn Declaration of Kathleen M. Porter is sufficient documentary evidence setting forth the chain-of-title that resulted in HUD becoming the holder of the Note. Therefore, by filing the Declaration of Kathleen M. Porter and the Secretary's Statement, setting forth the documentary evidence in support of the claim against Petitioner for the debt owed to HUD, the Secretary has met his burden to prove that the debt in this case is past due and legally enforceable against Petitioner.

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

December 6, 2010