



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

In the Matter of:

CHRISTOPHER JAGOE,

Petitioner

HUDOA No. 10-M-CH-LL31
Claim No. 7-710492740B

Christopher Jagoe
775 Longleaf Street
Vidor, TX 77662

Pro se

James W. Webster, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
For Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

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 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 February 22, 2010.

Background

On December 7, 1993, Petitioner executed and delivered to Gulf Coast Builders a Texas Retail Installment Contract and Disclosure Statement ("Note") in the amount of \$14,950.00. (Secretary's Statement ("Sec'y Stat."), filed March 31, 2010, ¶ 1, Ex. 1; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 3, Ex. 2.) After default by Petitioner, the Note was assigned to HUD by Empire Funding Corp., a Servicing Agent for TMI Acceptance Corp., under regulations governing the Title I Insurance Program. (Title I of the National Housing Act, 12 U.S.C. § 1703; Sec'y Stat., ¶ 1; Dillon Decl., ¶¶ 2-3.) The Secretary has filed a Statement, with documentary evidence, in support of his position that Petitioner is currently in default on the Note and that Petitioner is indebted to HUD in the following amounts:

- (a) \$5,571.98 as the unpaid principal balance as of March 31, 2010;
- (b) \$2,886.02 as interest on the principal balance at 5% per annum through March 31, 2010; and
- (c) interest on the principal balance at 5% per annum from April 1, 2010, until paid.

(Sec'y Stat., ¶ 2; Dillon Decl., ¶ 4.) The Secretary has made efforts to collect on the Note from Petitioner, but Petitioner remains in default. (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 4.)

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

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).

Petitioner challenges the existence and enforceability of the debt by arguing that: (1) he was unaware he owed such money; (2) he has been divorced and all the property was transferred to his ex-wife, and (3) the statute of limitations to collect on the debt has passed. (Petitioner's Filing (Pet'r Filing'), filed March 31, 2010.)

First, Petitioner claims to have been unaware of the loan. Regardless of whether or not Petitioner is aware of the loan itself, or the terms therein, he is, nonetheless, responsible for the terms of the loan, as his signature appears on the Note. "A person who signs a written contract is bound by its terms regardless of his or her failure to read and understand its terms." *Betaco, Inc. v. Cessna Aircraft Co.*, 32 F.3d 1126, 1136 (7th Cir.1994). Furthermore, Petitioner has provided no documentary evidence demonstrating that the signature on the Note is not his own. Therefore, I find that Petitioner is bound by the terms of the loan in the above referenced matter.

Second, Petitioner argues that he is not responsible for the loan amount because a divorce decree, dated June 6, 1996, released him from the obligation and transferred the property identified in the Note to his ex-wife. (Pet'r Filing.) Petitioner's reliance upon the terms of a divorce decree that purports to release Petitioner from any obligation to repay the subject debt is not a valid defense to this action. On December 7, 1993, approximately two and a half years prior to the divorce, both Petitioner and Petitioner's ex-wife jointly and severally executed and delivered the Note. As a co-signer on the Note, Petitioner is jointly and severally liable with his ex-wife for repayment of the debt. "Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together." *In the Matter of Amy Frazier*, HUDBCA No. 99-C-SE-Y117 (July 26, 1999). Accordingly, the Secretary may proceed against any co-signer for the full amount of the debt. 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 Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004) (citing *In the Matter of Deborah Gage*, HUDBCA No. 86-1727-F286 (January 14, 1986); *see also*, 27B C.J.S. Divorce §251 (4) (1959); 63 A.L.R. 3d 373, 403-04 (1975)). Petitioner's divorce decree only determined the rights and liabilities between Petitioner and his ex-wife. *In the Matter of Hedieh Rezai* (citing *In the Matter of Kimberly S. King (Theide)*, HUDBCA No. 89-4587-L74 (April 23, 1990)). Petitioner may be able to enforce the divorce decree against his ex-wife in state or local court to recover monies paid to HUD by him to satisfy this obligation. Nevertheless, Petitioner remains jointly and severally liable for the contract at issue and the Secretary has the right to enforce the obligation against him individually.

Finally, Petitioner argues that the statute of limitations bars recovery in this case. Petitioner states, the "statute of limitations to collect debt in Texas is 4 years, this debt is nearly 14 years old." (Pet'r Filing.) Previously, 31 U.S.C. § 3716 contained a 10 year statute of limitations period for federal offset cases. However, the governing statute in 31 U.S.C. § 3716 (e)(1) that contained the ten-year statute of limitations period has since been amended to eliminate the ten-year limitation entirely.¹ The regulation implementing the statute is therefore superseded by this amendment to 31 U.S.C. § 3716. As a result, no statute of limitations period applies in federal offset cases.

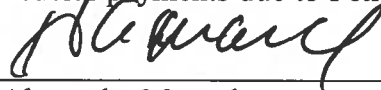
Petitioner has not filed persuasive documentary evidence to prove that the debt is not past due or is unenforceable. This Office finds, therefore, that the claim that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

¹ On May 22, 2008, 31 U.S.C. 3716 (e)(1) was amended in Public Law No. 110-234, § 14219 which now provides: Elimination of statute of limitations applicable to collection of debt by administrative offset.

ORDER

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative offset is vacated. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of an administrative offset of any federal payments due to Petitioner to the extent authorized by law.



H. Alexander Manuel
Administrative Judge

April 16, 2010