



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

In the Matter of:

**OTIS L. JENKINS,**

Petitioner

HUDOA No. 10-M-CH-LL39  
Claim No. 7-711502700A

Otis L. Jenkins  
1125 E. 113<sup>th</sup> Street  
Cleveland, OH 44108

Pro se

Sara Mooney, 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 18, 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 alleged debt 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 23, 2010.

## Background

The nature of the alleged debt is an Ohio Retail Installment Contract and Disclosure Statement ("Note") that was executed by Petitioner on June 28, 1996. (Secretary's Statement ("Sec'y Stat."), filed March 9, 2010, ¶ 1, Ex. 1.) The records of Cuyahoga County, Ohio show that Petitioner currently owns the property that benefited from the loan which was insured by the Secretary, as demonstrated by a quit claim deed that was recorded in his favor on January 24, 2008. (Sec'y Stat., ¶ 4, Ex. 3.) Petitioner is alleged to be indebted to the Secretary in the following amounts:

- (a) \$14,716.49 as the unpaid principal balance as of February 28, 2010;
- (b) \$7,710.45 as the unpaid interest on the principal balance at 5% per annum through February 28, 2010; and
- (c) interest on said principal balance from March 1, 2010 at 5% per annum until paid.

(Sec'y Stat., ¶ 3, Ex. 2; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated March 9, 2010, ¶ 6.) A Notice of Intent to Collect by Treasury Offset, dated January 27, 2010, was sent to Petitioner by HUD. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 7.)

## Discussion

Petitioner contests the validity of this debt and has requested copies of all records of this alleged debt. (Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed February 18, 2010.) Petitioner has submitted copies of documents filed in his Chapter 13 bankruptcy proceedings in the U.S. Bankruptcy Court for the Northern District of Ohio, namely a "Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines" and a "Notice of Dismissal of Chapter 13 Case." (*Id.*) Petitioner also submitted a "Notice of Sheriff's Sale with Set Minimum Bid" and a copy of a "Legal News" excerpt, both reporting the foreclosure of Petitioner's property. (*Id.*)

On March 9, 2010, the Secretary filed the Secretary's Statement, together with documentary evidence, to prove that Petitioner's alleged debt to HUD in this case is enforceable and past due. (Sec'y Stat.) In it, the Secretary asserts that "while Petitioner has indicated that he filed for debt relief on August 3, 2001, his bankruptcy was terminated on March 19, 2003 and no discharge was granted," and "[a]dditionally, no payments were made to HUD during the course of the bankruptcy and HUD was not listed as a secured or unsecured creditor.." (*Id.* at ¶ 2; Dillon Decl., ¶¶ 4-5.) In response to Petitioner's submission of foreclosure documentation, the Secretary states that "while the foreclosure of the primary mortgage may have foreclosed out the security interests of subordinate mortgages; he still remains personally liable on the note." (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 5.)

This Office agrees with the Secretary's position that the documents filed by Petitioner, on their face, do not demonstrate that his alleged debt to HUD in this case, has been discharged by the U.S. Bankruptcy Court.

On three separate occasions, 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 23, 2010; Order, dated March 10, 2010; and Order, dated June 30, 2010.) The June 30<sup>th</sup> Order stated, "Failure to comply with this Order shall result in a decision based on the documents in the record of this proceeding." Petitioner did not comply with any of these orders which required him to submit additional documentary evidence to prove his allegations.

Petitioner has, therefore, not met his burden to prove that the debt in this case is not past due or legally enforceable. In the absence of documentary evidence to support Petitioner's position, 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 payments due Petitioner.



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H. Alexander Manuel  
Administrative Judge

October, 28, 2010