



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

In the Matter of:

DAVID W. DICKENS,

Petitioner

HUDOA No. 10-M-CH-LL43
Claim No. 7-708212510B

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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 22, 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 23, 2010.

Background

On August 11, 1993, Petitioner executed a Retail Installment Contract, Sales and Credit Agreement ("Note") in the amount of \$14,990.00. (Secretary's Statement ("Sec'y Stat."), filed March 9, 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 Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated March 8, 2010, ¶ 3.)

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., ¶ 3; Dillon Decl., ¶ 3.) Petitioner is alleged to be indebted to the Secretary in the following amounts:

- (a) \$11,256.83 as the unpaid principal balance as of February 28, 2010;
- (b) \$3,377.52 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., ¶ 4; Dillon 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; Dillon Decl., ¶ 5.)

Discussion

Petitioner denies that he owes the debt in this case. Petitioner states, "The debt was discharged through bankruptcy." (Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed February 22, 2010.) Petitioner has enclosed in his letter copies of documents filed in his Chapter 13 bankruptcy proceedings in the U.S. Bankruptcy Court for the Eastern and Western Districts of Arkansas, namely Trustee's Final Report and Account and Trustee's Motion to Dismiss. The documents and the Case Summary retrieved through PACER, attached to Dillon Decl., show that Petitioner filed a Chapter 13 bankruptcy in the Western District of Arkansas, Case No. 94-16310 on August 29, 1994. (Pet'r Hr'g Req., Attach.; Dillon Decl., ¶ 6, Ex. A.) Case No. 94-16310 was converted to a Chapter 7 bankruptcy on September 8, 1999 and was dismissed/terminated on February 16, 2000. (Pet'r Hr'g Req., Attach.; Dillon Decl., ¶ 6, Ex. A.)

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 "notwithstanding Petitioner's contention that this debt was discharged in bankruptcy, records retrieved through "PACER" show that Petitioner was not granted a discharge after his Chapter 13 was converted to a Chapter 7." (*Id.* at ¶ 6; Dillon Decl., ¶ 6, Ex. A.)

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 9, 2010; and Order, dated

April 5, 2010.) The April 5th Order stated, "Failure to comply with this Order may result in a decision based upon the documents in the record of this proceeding."

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 payment due Petitioner.



H. Alexander Manuel
Administrative Judge

August 4, 2010