



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

In the Matter of:

Jane Johnson,
Petitioner

HUDOA No. 10-M-CH-LL45
Claim No. 780180862OA

Jane Johnson
947 Douglas N.W.
Grand Rapids, MI 49504

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 January 19, 2000, 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" or "the Secretary") 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 23, 2010, Petitioner made a request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b). The administrative judges of the Office of Appeals 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, this Office temporarily stayed referral of the debt to the U.S. Department of Treasury for offset on February 24, 2010. (Notice of Docketing, Order and Stay of Referral ("Notice"), dated February 24, 2010.)

Background

On October 18, 1988, Petitioner executed a Note under the provisions of the Title I insurance program. (Secretary's Statement ("Sec'y Stat."), filed March 11, 2010, ¶ 1; Ex. 1, Note.) On August 9, 1999, the Note was assigned to HUD by the Michigan State Housing Development Authority. (Sec'y Stat. ¶ 2.)

HUD has been unsuccessful in its attempts to collect this debt from Petitioner. (Sec'y Stat. ¶ 3.) The Secretary alleges that Petitioner is justly indebted to HUD in the following amounts:

- (a) \$6,100.52 as the unpaid principal balance as of February 28, 2010;
- (b) \$3,418.61 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.

(Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center, HUD ("Dillon Decl."), dated March 10, 2010, ¶ 4.)

HUD issued demand letters to Petitioner on October 14, 1999, October 24, 1999, and November 13, 1999. (Sec'y Stat. ¶ 5.) Petitioner responded on November 20, 1999. (*Id.*) A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner on January 19, 2000. (Sec'y Stat. ¶ 6.) On March 27, 2000, HUD referred the debt to the Treasury. (*Id.*) On May 23, 2008, Petitioner informed HUD that she had previously received a letter from HUD indicating that the debt had been paid. (Sec'y Stat. ¶ 7.) HUD requested that Petitioner forward that letter for review, but Petitioner did not comply with that request. (*Id.*)

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 does not dispute the existence of the debt. Rather, Petitioner argues that in 2002 HUD agreed to release Petitioner of her obligation to pay the alleged debt to HUD. Petitioner explains that,

“...a collection phone representative for HUD called me in 2002 and made a PHONE PROMISE to waiver [sic] my HUD Debt if I could prove that I was now Disable [sic] and unable to pay this debt off. I sent HUD my Disable Papers and I no longer heard from HUD.” (emphasis in original)

(Pet'r's Letter, Apr. 2, 2010.) This Office has held that Petitioner must submit evidence of either a *written* release from HUD showing that Petitioner is no longer liable for the debt, or evidence of valid or valuable consideration paid to HUD in order to prove that the debt is not owed by Petitioner. Cynthia Ballard Rachall, HUDOA No. 09-H-AWG103 at 3 (August 6, 2009) (citing William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000)).

The only evidence Petitioner submits in support of her argument is a letter from her doctor dated February 26, 2002 that Petitioner claims was sent to HUD in 2002. (*Id. attaches. Doctor's Letter.*) The letter only proves that, in the doctor's opinion, Petitioner should be regarded as disabled. It is insufficient to prove that HUD agreed to terminate Petitioner's obligation to pay in exchange for Petitioner sending proof of disability. 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). Accordingly, I find that Petitioner's argument fails for want of proof.

Petitioner also claims that, "The only thing left to pay on this loan is interest. I feel that two thous. [sic] or LESS is a fair amount of interest to pay HUD." (emphasis in original) (Pet'r's Letter.) This Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the HUD. Petitioner may wish to discuss this matter with either Counsel for the Secretary or Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

Lastly, although Petitioner has failed to submit proof that HUD released Petitioner of her obligation to pay the debt in this case, Petitioner may file a Motion for Reconsideration if she is able to produce adequate proof of a release from HUD at a later date.

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 hereby **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 6, 2010