



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

In the Matter of:

FRANCISCO GONZALEZ,

Petitioner

HUDOA No. 10-M-CH-LL47
Claim No. 7-801287700A

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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 24, 2010.

Background

On June 17, 1992, Petitioner executed and delivered to West Belle Mortgage a Note ("Note") in the amount of \$25,000.00 which was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. ((Secretary's Statement ("Sec'y Stat."), filed March 08, 2010, ¶ 1, Ex. 1; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 3.) Subsequently, West Bell Mortgage assigned the Note to The Money Store a/k/a TMS Mortgage Inc. who later assigned the Note to First Union National Bank. (Dillon Decl., ¶ 3.) Petitioner failed to make payments as agreed in the Note. Consequently, First Union Bank assigned the Note to the Secretary pursuant to the provisions of the Title 1 Insurance Program. (Sec'y Stat., ¶ 2; Dillon Decl., ¶ 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) \$24,773.20 as the unpaid principal balance as of February 28, 2010;
- (b) \$14,598.96 as interest on the principal balance at 5% per annum through February 28, 2010; and
- (c) interest on the principal balance at 5% per annum from February 29, 2010, until paid.

(Sec'y Stat., ¶ 4; 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. (Dillon 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 has acknowledged that he signed the Note which is the subject of these proceedings. However, he argues that (1) "there is no documentary evidence to support the Secretary's claim that HUD is legally entitled to collect on the underlying debt" and (2) "notwithstanding the validity of this debt, payment of all or any portion of the debt would constitute financial hardship upon me and my family." (Petitioner's Statement ("Pet'r Stat."), filed March 31, 2010, ¶¶ 2-4.)

Petitioner argues that HUD has failed to meet its burden of going forward and proving the existence of the debt because "there is no documentary evidence to support the Secretary's claim that HUD is legally entitled to collect on the underlying debt." (Pet'r Stat. ¶¶ 2-3.) 24 C.F.R. § 17.152(b) requires Petitioner to present evidence showing that all or part of the debt is not past due or not legally enforceable. In an Order issued on March 8, 2010, this Office ordered Petitioner to file "documentary evidence in accordance with 24 C.F.R. § 17.152(b) proving that all or part of the alleged debt in this case is not past due or not legally enforceable against Petitioner." (Order, dated March 8, 2010.)

Petitioner failed to present any documentary evidence to prove that debt is either not past due or is unenforceable. The burden of proof, therefore, never shifted to the Secretary. Even if the burden had shifted, however, the Secretary has provided sufficient documentary evidence in response to the Notice of Docketing, Order, and Stay of Referral issued by this Office on February 24, 2010, in the form of a signed Note and a declaration from the Director of the Asset Recovery Division of the Financial Operations Center of HUD, to show that Petitioner entered into an agreement with HUD for a loan in the amount stated above and failed to pay back the loan. (See, Sec'y Stat., Ex. 1; Dillon Decl.) Additionally, it should be noted that Petitioner incorrectly cites 31 C.F.R. 285(f)(8)(i) in support of his argument. That regulation applies only to administrative wage garnishment cases and does not apply to federal offset cases such as this. In sum, there is no documentary evidence in the record to prove that the debt is either not past due or is unenforceable.

Petitioner also seems to argue that he was unaware of the terms of the Note and states that he "did not ever agree with HUD to pay back the debt." (Pet'r Stat., ¶¶ 2-3.) Although Petitioner may be confused about the terms of the Note, he is, nonetheless, responsible for the terms of the loan. "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). Therefore, I find that Petitioner is bound by the terms of the loan in the above referenced matter.

Finally, Petitioner argues that "notwithstanding the validity or invalidity of this debt, I submit that payment of all or any portion of this debt would constitute financial hardship upon me and my family." (Pet'r Stat., ¶ 4.) Unfortunately, evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable in administrative offset cases such as this. *Thelma Smith*, HUDBCA No. 00-A-NY-AA8 (June 19, 2000) (citing *Della Coleman*, HUDBCA No. 99-C-SE-Y73 (Feb. 23, 2000)). Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *Raymond Kovalski*, HUDBCA No. 87-1681-G18 (Dec. 8, 1986). Furthermore, this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Should Petitioner wish to initiate, continue, or renew discussion regarding settlement terms, Petitioner may wish to discuss this matter with counsel for the Secretary in this proceeding, or to file a HUD Title I Financial Statement (HUD Form 56142) with Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. Mr. West's telephone number is 1-800-669-5152, extension 4206.

Petitioner has failed to file sufficient documentary evidence to support his argument that the debt that is the subject of this proceeding is unenforceable or not past-due, and has therefore failed to meet his burden of proof as set forth in 24 C.F.R. § 17.152. In the absence of sufficient documentary evidence filed by Petitioner, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner.

ORDER

For the reasons set forth above, 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 seek collection of this outstanding obligation by means of administrative offset of any federal payments due to Petitioner to the extent authorized by law.



H. Alexander Manuel
Administrative Judge

April 16, 2010