



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

In the Matter of:

KENNETH FAIRBANKS,

Petitioner

HUDOA No. 10-M-CH-LL55
Claim No. 7-801027670A

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Pro Se

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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 23, 2010, Petitioner made a request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD in this case. The Office of Appeals has been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. § 17.152(c). 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, until the issuance of a written decision by the Administrative Judge. *See* 24 C.F.R. § 17.156.

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 asserts that the debt is not past due or legally enforceable, and that the documents he has received from HUD in the past are illegible. Petitioner states, "I do believe that the debt is not past-due[.] I also beleive [sic] that it's not legally enforceable, so therefore I wish to challenge these actions that you have set before me. The documents that I have received from HUD in the past were illegible. I have requested for new documents to be sent to me that are legible. I still have yet to receive them." (Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed February 23, 2010.)

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 24, 2010; Order ("March Order"), dated March 9, 2010; Order ("April Order"), dated April 15, 2010.) The April Order specifically stated, "Failure to comply with this Order shall result in a decision based upon the documents in the record of this proceeding." Petitioner failed to respond to all three Orders.

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

July 28, 2010