



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

In the Matter of:

BONNIE L. RITCHEY,

Petitioner

HUDOA No. 10-M-CH-LL90
Claim No. 7-210005580B

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Pro se

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For the Secretary

DECISION AND ORDER

On or about March 1, 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 March 16, 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 March 19, 2010, until the issuance of a written decision by the Administrative Judge. *See* 24 C.F.R. § 17.156.

Background

On January 16, 2004, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note") and Security Instrument to secure a partial claim paid on her behalf by the Secretary to pay the arrearages on her primary FHA-insured mortgage and to avoid the foreclosure of her primary residence. (Secretary's Statement ("Sec'y Stat."), filed March 25, 2010, ¶ 1, Ex. 1.) The original amount to be repaid under this Note was \$6,303.24. (*Id.* at ¶ 2, Ex. 1.)

The Note provides that the loan becomes due upon the occurrence of certain events or conditions. (*Id.*, Ex. 1.) One such condition is when the borrower pays the primary note in full. (*Id.*, Ex. 1.) On or about December 13, 2005, the FHA mortgage insurance on the original Note and Security Instrument was terminated, as the mortgagee indicated the mortgage was paid in full, thus making the Note due immediately. (*Id.* at ¶ 3; Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated March 25, 2010, ¶ 4.)

HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 5.) Petitioner is alleged to be indebted to the Secretary in the following amounts:

- (a) \$6,303.24 as the unpaid principal balance as of February 28, 2010;
- (b) \$840.40 as the unpaid interest on the principal balance at 4% per annum through February 28, 2010; and
- (c) interest on said principal balance from March 1, 2010 at 4% per annum until paid.

(Sec'y Stat., ¶ 6; Dillon Decl., ¶ 5.) A Notice of Intent to Collect by Treasury Offset, dated March 1, 2010, was sent to Petitioner by HUD. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 6.)

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 denies that the debt in this case is past due or legally enforceable. Petitioner states, "I do not owe any of this debt," and requested "a copy of HUD's records relating to the debt." (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed March 16, 2010.) Pursuant to the Petitioner's request, a copy of her file was mailed to her by HUD on March 25, 2010. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 8.)

Petitioner now asserts that the debt in this case is not past due or legally enforceable because (1) the Colorado Housing and Finance Authority (“CHFA”) “ripped her off”; (2) CHFA failed to follow a HUD’s internal handbook; and (3) Petitioner paid the subject debt when she refinanced her mortgage. (Petitioner’s Documentary Evidence (“Pet’r Evid.”), filed August 4, 2010.)

First, Petitioner states: “I believe CHFA ripped HUD and [me] off. I paid on this home 10 years purchase price \$78,000, so at closing then still got [sic] \$70,000 plus all my payments for 10 years. Now I owe 2 times as much as I ever did.” (*Id.*) As support, Petitioner filed a copy of a payoff statement from CHFA, dated December 6, 2005, showing an unpaid principal balance of \$67,863.16 and a payoff amount of \$70,565.68. Petitioner also submitted a copy of a HUD Settlement Statement, dated December 5, 2005, showing a slightly different payoff amount of \$70,558.39. These documents, however, do not demonstrate that Petitioner paid the amounts due and owing under the Note.

In fact, Petitioner has failed to file any documentation in support of the assertion that her liability to HUD under the Note has been fully satisfied. Specifically, Petitioner has not shown that HUD authorized CHFA to receive payments due to HUD on HUD’s behalf, that HUD directed Petitioner to make payment to CHFA, or that Petitioner actually paid HUD’s debt to CHFA.

This Office has ruled that in order to be discharged from an obligation to repay a debt to HUD, Petitioner must have been issued a release, in writing, from HUD. *In re Juanita Mason*, HUDOA No. 08-H-NY-AWG70 (December 8, 2008). Petitioner has not filed any such release in this case and has failed to provide sufficient evidence to show that the alleged debt to HUD in this case has been repaid in full. In the absence of a release from HUD discharging Petitioner from her obligation to repay the debt, this Office finds that Petitioner remains indebted to HUD. The Secretary, on the other hand, has 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.)

Second, Petitioner alleges that CHFA did not follow what the “law required”: “I [am] also sending the papers that “Jennifer Retty, head of Adams County Housing Authority Commerce City, Colorado [sic] where she points out CHFA has neglected to take care of any thing which by law [it was] required to do.” (Pet’r Evid.) As evidence, Petitioner submitted a copy of Mortgagee Letter 00-05, dated January 19, 2000, with a note handwritten by an unidentified individual stating, “Bonnie, I highly recommend you get an attorney that understands what mortgagee letters are Anyway – doesn’t look like CHFA followed through per the 2003 #19 letter under pay-offs – Title should honor that [sic].” (*Id.*)

However, the evidence submitted by Petitioner does not support her assertion that CHFA did not follow what the “law required.” Petitioner has not provided any other valid documentary evidence to substantiate Petitioner’s contention that CHFA did not follow the law. Moreover, Petitioner has not demonstrated why CHFA is legally obligated to follow HUD’s internal handbook, such as Mortgagee Letter 00-05, or why CHFA’s alleged noncompliance with HUD’s internal handbook has any bearing on whether the debt to HUD in this case is not past due or

legally enforceable. "Assertions without evidence are insufficient 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). Therefore, Petitioner's assertion that CHFA's alleged noncompliance with the law renders Petitioner's debt unenforceable fails for want of proof.

Third, Petitioner alleges that she paid the subject debt when she refinanced her mortgage. Petitioner states, "Also[,] EMC Mortgage[,] which was 2nd mortgage at time[,] took loan out[;] original loan 22,000 ended. [I] [p]a[id] them at pay off [\$]31,212 after paying on for 3 years. Somebody made some money and it wasn't me [sic]." (Pet'r Evid.) As support, Petitioner filed a copy of a payoff statement from the EMC Mortgage Corporation ("EMC"), dated December 1, 2005, showing the total unpaid principal balance and the total payoff amount of \$22,665.30 and \$31,212.90, respectively, as of December 1, 2005. (*Id.*) Petitioner also filed a copy of a HUD Settlement Statement, dated December 5, 2005, showing the same payoff amount. (*Id.*)

Again, however, Petitioner has failed to submit any documentation proving that she paid the payoff amount. Specifically, Petitioner has not shown that HUD authorized EMC to receive payments due to HUD on HUD's behalf, that HUD directed Petitioner to make payment to EMC, or that Petitioner actually paid HUD's debt to EMC.

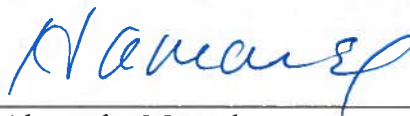
This Office has ruled that in order to be discharged from an obligation to repay the alleged debt to HUD, Petitioner must have been issued a release, in writing, from HUD. *In re Juanita Mason*, HUDOA No. 08-H-NY-AWG70 (December 8, 2008). Petitioner has not filed any such release in this case and has failed to provide sufficient evidence to show that the alleged debt has been repaid in full. In the absence of a release from HUD discharging Petitioner from her obligation to repay the debt, this Office finds that Petitioner remains indebted to HUD. The Secretary, on the other hand, has 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.)

Petitioner has, therefore, not met her 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

December 7, 2010