



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

In the Matter of:

JOHNNIE SNOW,

Petitioner

HUDOA No. 10-M-NY-LL111
Claim No. 7-7076308108

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Pro Se

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For the Secretary

DECISION AND ORDER

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 an alleged delinquent and legally enforceable debt owed to HUD.

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 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 30, 2010, until the issuance of a written decision by the Administrative Judge. *See* 24 C.F.R. § 17.156.

Background

On or about March 6, 1992, Petitioner (a/k/a Johnnie M. Snow) executed and delivered a Retail Installment Contract, Note and Disclosure Statement ("Note") to Better Homes Services in the amount of \$7,900, 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 June 9, 2010, ¶ 2, Ex. A)

Contemporaneously, on March 6, 1992, the Note was assigned by Better Homes Services to Empire Funding Corp. (Sec'y Stat., ¶ 3.) The Note was then assigned by Empire Funding Corp. to TMI Financial, Inc. (Sec'y Stat., ¶ 4.) Subsequently, the Note was assigned by TMI Financial, Inc. to NationsBank of Virginia, N.A. as Trustee. (Sec'y Stat., ¶ 5.)

Petitioner allegedly failed to make payment on the Note as agreed. (Sec'y Stat., ¶ 6.) Consequently, in accordance with 24 C.F.R. § 201.54, on October 10, 1994, NationsBank of Virginia, N.A. as Trustee for TMI Financial, Inc., Servicing Agent for Aegis Securitized Assets, Inc. assigned the Note to the United States of America. (*Id.*) The Secretary is the holder of the Note on behalf of the United States of America. (*Id.*)

Petitioner is currently in default on the Note. The Secretary has made efforts to collect this debt from the Petitioner, but has been unsuccessful. Petitioner is allegedly indebted to the Secretary in the following amounts:

- (a) \$7,052.57 as the unpaid principal balance as of March 31, 2010;
- (b) \$2,186.45 as the unpaid interest on the principal balance at 3% per annum through March 31, 2010; and
- (c) Interest on said principal balance from April 1, 2010 at 3% per annum until paid.

(Sec'y Stat., ¶ 7, See Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center, HUD ("Dillon Decl."), ¶ 4.)

A Notice of Intent to Collect by Treasury Offset dated February 22, 2010 was sent to Petitioner. (Sec'y Stat., ¶ 8, Dillon Decl. ¶ 5.) On April 5, 2010, HUD's Financial Operations Center, Asset Recovery Division sent Petitioner copies of the Credit Application for Home Improvement Loan, the Retail Installment Contract, Note and Disclosure Statement, and the Completion Certification. (Sec'y Stat., ¶ 9, Dillon Decl. ¶ 6.)

Tyrone L. Snow, Sr., Petitioner's husband as well as co-borrower on the subject loan, filed a Chapter 13 bankruptcy on August 19, 1994 in the United States Bankruptcy Court for the Eastern District of Tennessee under case number 94-13002. Mr. Snow was discharged from his Chapter 13 bankruptcy action on December 15, 2000. (Sec'y Stat., ¶ 10, Dillon Decl. ¶ 7.) Since Petitioner was not included in the bankruptcy, nor was the debt that is the subject of this proceeding discharged or paid as a result of Mr. Snow's bankruptcy action, Petitioner remains liable for repayment of the Note. (Sec'y Stat., ¶ 11, Dillon Decl. ¶ 7.)

Discussion

31 U.S.C. §§ 3716 and 3720A provide federal agencies with a means of collecting debts owed to the United States Government. The burden of proof is on the debtor to show that the debt claimed by the Secretary is unenforceable and not past due. 24 C.F.R. § 17.152(b). Failure to provide documentary evidence that the alleged debt is unenforceable or not past due shall result in a dismissal of the debtor's request for a review of this alleged debt. *Id.*

Petitioner challenges collection of the debt stating, "the debt that I owe [sic] I do not owe this money [sic]. Also, please write and tell me in details on [sic] what this does have to do with me? How I am [responsible] for money [I] owe back in 1992?" (Petitioner's Request for Hearing, filed March 24, 2010.)

Petitioner was ordered to file "documentary evidence to prove that the alleged debt to HUD in this case is unenforceable or not past due." (Ruling and Order dated May 6, 2010.) Petitioner was subsequently ordered 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 legally unenforceable against Petitioner." (Order, dated June 10, 2010.) The Order further stated that "[f]ailure to comply with this Order may result in a decision based upon the documents in the record of this proceeding." (*Id.* (emphasis in original.)) Petitioner failed to respond to the June 10, 2010 Order.

Petitioner has failed to provide any documentary evidence to prove that this debt is not past due or is unenforceable. 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, 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

September 29, 2010