



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

In the Matter of:

**DAISY RIVERA CRUZ,**

Petitioner

HUDOA No. 10-M-NY-LL12  
Claim No. 7-210048990B

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Pro se

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For the Secretary

**DECISION AND ORDER OF DISMISSAL**

On or about December 21, 2009, 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 or about January 6, 2010, Petitioner made a timely 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. §§ 17.152-17.153. 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 January 8, 2010, pursuant to 24 C.F.R. § 17.156.

## Discussion

31 U.S.C. §§ 3716 and 3720A provide federal agencies with a means of collecting debts owed to the United States government. The Secretary may not refer a debt to the U.S. Department of the Treasury for administrative offset without providing to the alleged debtor, at least 65 calendar days prior to such referral, a Notice of Intent that states “[t]he nature and amount of the [alleged] debt[.]” 24 C.F.R. § 17.151(a). A debtor who receives a Notice of Intent has the burden to show that the debt claimed by the Secretary is unenforceable or not past-due. *Id.* § 17.152(a)-(b). Failure to provide documentary evidence that the alleged debt is unenforceable or not past-due within 65 calendar days of receipt of the Notice of Intent shall result in a dismissal of the debtor’s request for a review. *Id.*

Petitioner alleges that the debt that is the subject of this proceeding is unenforceable because of her bankruptcy discharge: “All of the debt is not enforceable by law because it was included in Bankruptcy Case 03-05632 submitted through Chapter 13 trustee US Bankruptcy Court, Federal District of Puerto Rico, Jose R Carrion (trustee).” (Petitioner’s Hearing Request (“Pet’r Hr’g Req.”), filed January 6, 2010.)

On January 8, 2010, this Office ordered Petitioner to file documentary evidence to prove that the debt to HUD in this case is unenforceable or not past due. Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated January 8, 2010. The Notice of Docketing stated that Petitioner’s documentary evidence “shall include a copy of the actual Order of the U.S. Bankruptcy Court for the District of Puerto Rico, discharging the debt that is the subject of this proceeding, as well as a copy of the actual creditor liability schedule listing HUD or HUD’s predecessor lender as a party to the bankruptcy proceedings.” (*Id.*, emphasis added).

As support of her claim, on January 28, 2010, Petitioner filed a letter that attached a Bankruptcy Court form entitled “Schedule D – Creditors Holding Secured Claims.” The document, however, does not appear to address the Note allegedly owed to HUD in this case in the principal amount of \$6,008.08.

Petitioner was ordered to file “the actual Order of the U.S. Bankruptcy Court for the District of Puerto Rico, discharging the debt that is the subject of this proceeding, as well as a copy of the actual creditor liability schedule listing HUD or HUD’s predecessor lender as a party to the bankruptcy proceedings.” (*Id.*) Without these documents, I am unable to determine whether the debt in this case has been discharged by the U.S. Bankruptcy Court for the District of Puerto Rico.

Accordingly, on February 18, 2010, Petitioner was ordered again to file documentary evidence on or before March 10, 2010, in accordance with 24 C.F.R. §17.152(b), proving that she had provided proper notice to HUD or its predecessor lenders, that Petitioner had made all payments due to HUD or its predecessor lenders under the Chapter 13 plan, and that all or part of the alleged debt in this case was not past due or legally enforceable against Petitioner. (Order to Petitioner (“Order”), dated February 18, 2010.) Petitioner was also instructed that she may file

an affidavit or sworn declaration setting forth Petitioner's evidence and legal arguments. (*Id.*) The Order also stated: Failure to comply with this Order shall result in a decision based upon the documents in the record of this proceeding, or the dismissal of Petitioner's appeal.

Despite the Order, Petitioner has submitted no evidence that she scheduled the debt to HUD on her bankruptcy petition or that the debt was ever discharged by the U.S. Bankruptcy Court. In the absence of evidence to the contrary, Petitioner remains liable for the debt. Therefore, I find that Petitioner has failed to prove that the debt is not past due or is not legally enforceable against Petitioner in the amount claimed by the Secretary.

**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 this matter is **DISMISSED** with prejudice, for want of prosecution, pursuant to the provisions of 24. C.F.R. § 17.152(b). 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.



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H. Alexander Manuel  
Administrative Judge

July 13, 2010