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

In the Matter of:		
SUSAN ENGLISH,	HUDOA No.	10-M-NY-LL130
	Claim No.	7-210065020A
Petitioner		

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Pro se

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CORRECTED DECISION AND ORDER

This corrected Decision and Order supersedes the Decision and Order issued on March 9, 2011. 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 April 19, 2010, Petitioner requested a hearing concerning the existence, amount or enforceability of a debt allegedly owed to HUD. The Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b). The Administrative Judges of the Office of Appeals are 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, this Office temporarily stayed referral of the debt to the U.S. Department of Treasury for offset on April 21, 2010. *See* 24 C.F.R. § 17.156.

Background

Petitioner executed and delivered a Subordinate Note (the "Note") dated November 24, 2003, in the amount of $1,397.15, in exchange for foreclosure relief granted by the Secretary. (Secretary's Statement ("Sec'y Stat."), dated August 6, 2010, ¶ 2, Ex. A; the Subordinate Note ("Sub. Note"), dated November 24, 2003, ¶ 2; Ex. B; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated August 5, 2010, ¶ 4-5.) The Note cites specific events that would cause the debt to become immediately due and payable. (Sec'y Stat., ¶ 3, Sub. Note, ¶ 4, Dillon Decl., ¶ 4.) One of these triggering events was when the Petitioner paid in full, all amounts due under the primary FHA note. (*Id.*) On or about December 9, 200, the FHA insurance on Petitioner's primary note was terminated, as the lender indicated that the note had been paid in full. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 4.) Thus, the Note became due and payable in full at that time. (Sec'y Stat., ¶ 5.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 7, Dillon Decl. ¶ 5.) The Secretary has filed a statement with documentary evidence in support of his position that Petitioner is indebted to HUD in the following amounts:

(a) $1, 387.15 as the unpaid principal balance as of July 31, 2010;

(b) $8.12 as the unpaid interest on the principal balance at 1% per annum through July 31, 2010; and

(c) interest on said principal balance form July 31, 2010 at 1% per annum until paid.

(Sec'y Stat., ¶ 7, Dillon Decl., ¶ 5.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, authorizes federal agencies to collect debts owed to the United States Government by means of administrative offset. In these cases, the alleged debtor bears the burden of proving that the debt claimed by the Secretary is unenforceable or not past due. 24 C.F.R. § 17.152(b); *Juan Velaquez*, HUDBCA No. 02-C-CH-CC049 (Sept. 25, 2003). Failure to provide documentary evidence to meet this burden shall result in a dismissal of the debtor's request for review. Petitioner disputes the existence of the debt and argues that: (1) she did not occupy the home at the time of the date on the Department's notice; and (2) she was not the recipient of the loan.

First, Petitioner claims that she did not occupy the home at the "date of the debt" listed as June 4, 1981 on the Notice of Intent to Collect by Treasury Offset. ("Notice of Intent.") Specifically, Petitioner declared that "The date of the debt is 6/4/81 and I didn't become the owner of the home until 7/30/90." (Declaration of Susan English ("Pet'r Decl."), dated July 13, 2010.) Petitioner's related second claim states that she was not the recipient of the money, and consequently she should not have to pay back debt she did not incur. (Pet'r Decl.) Petitioner

included a copy of HUD's Notice of Intent, a Tax Assessment report, and a Mortgage Release, Satisfaction, and Discharge. (Petitioner's Evidence (Pet'r Evid.").)

In response to Petitioner's arguments that she did not occupy the home at the "date of debt" listed on the Notice of Intent and that she was not the recipient of the loan, the Secretary claims that the June 4, 1981 "date of debt" listed on the Notice of Intent was incorrect. (Supplemental Secretary's Statement ("Supp. Sec'y Stat."), ¶ 3.) The Secretary asserts that the correct "date of debt" is November 24, 2003, when Petitioner was occupying the property that is at issue in this case. (Supp. Sec'y Stat., ¶ 5.) The Secretary further claims that the Notice of Intent nonetheless fulfills the notice requirements of 24 C.F.R. § 17.151. (Supp. Sec'y Stat., ¶ 6.)

24 C.F.R. § 17.151(a) states that the Notice of Intent will articulate "the nature and amount of the debt." The Secretary argues that "there is no specific requirement in the regulation that the notice list the specific 'date' that the debt was incurred." (Supp. Sec'y Stat., ¶7.) While the Secretary's observation that "no specific date is required" is technically correct, I find that the Notice of Intent itself provides the date of the debt as part of the Notice. Providing a correct date or at least a reasonably close date provides important information and context to the debtor regarding the "nature" of the debt.

The Notice of Intent states that the "date of debt" was in 1981, but the correct "date of debt" in this case was actually 2003. This would require Petitioner to deduce that she owes a debt that was incurred 22 years prior to the date of the debt in this case. I find that a reasonable person could be confused by the incorrect date provided by the Notice of Intent filed in this case, and would have reason to believe the debt was erroneously attributed to him or her. Petitioner states that she, in fact, did not believe it was her debt. (Pet'r Decl.)

Further, the Notice of Intent describes the "type of debt" as "SF Partial CLMS." (Notice of Intent.) I do not find that this description of the debt, coupled with the confusion created by the incorrect date of debt, provides sufficient notice as to the "nature of the debt." There is no evidence that this term has become common knowledge or that the Petitioner was specifically familiar with its meaning. The Secretary identified this term as a "Single Family Partial Claim" debt. (Supp. Sec'y Stat., ¶8.) However, the original Note is entitled "Subordinate Note," and neither "Single Family Partial Claim" nor "SF Partial CLMS" is mentioned anywhere within the text of the contract.

Finally, the *Stover v. III. Student Assistance Comm'n, et al* case, [2005 U.S. Dist. LEXIS 9621, 22 (April 20, 2005)] cited by the Secretary is not found to be instructive in this case. The court there found that the Department of Education's notices were proper because "the court noted that the notices were sent to the debtor's last known address, stated the nature and amount of the debt, the Department's intent to seek offset or garnishment, provided the debtor with the opportunity to inspect the Department's file pertaining to the debt, the opportunity to enter into a repayment agreement, and the opportunity to request a hearing." (Supp. Sec'y Stat., ¶ 11.) The adequacy of the notice, specifically the "nature of the claim," does not appear to have been at issue in that case.

Since issues concerning adequate notice present issues of due process, it is important that the Government make every effort to notify debtors of the exact nature of the claim or debt being pursued. Due process requires "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *In re: Sergio Prado*, HUDALJ 91-1722-DB (citing *Transco Security v. Freeman*, 639 F.2d 318, 323 (6th Cir.), *cert. denied,* 4545 U.S. 820 (1981) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1949)). I find that Petitioner was presented with inadequate notice regarding the "nature of the debt." In this case, I do not find that the debt is unenforceable or not past due, only that the Secretary may not proceed with administrative offset based on the Notice of Intent previously sent in this case.

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 **STAYED INDEFINITELY**. It is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative offset at this time. It is

Further ordered that the Decision and Order issued in this case on March 9, 2011 is **VACATED.**

H. Alexander Manuel
Administrative Judge

March 14, 2011