



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

In the Matter of:

Deborah Lopes,

Petitioner

HUDOA No. 10-M-NY-LL155
Claim No. 7-210066730A

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Pro Se

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For the Secretary

DECISION AND ORDER

On or about July 26, 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 August 30, 2010, Petitioner filed a 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 and 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 August 13, 2010.

Background

On June 23, 2008, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") in the amount of \$3,658.05 in exchange for foreclosure relief granted by the Secretary. (Secretary's Statement ("Sec'y Stat."), filed September 14, 2010, ¶ 2, Ex. A.) Paragraph 4 of the Note cites specific events which cause the debt to become due and payable. One of these events is the payment in full of the primary note, which was insured against default by the Secretary. (Sec'y Stat., ¶ 3, Ex. A, ¶ 4(A)(i), (iii).) On or about December 24, 2009, the FHA insurance on Petitioner's primary note was terminated when the lender informed the Secretary that the note was paid in full. (Sec'y Stat., ¶ 4; Ex. B, Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, HUD Financial Operations Center ("Porter Decl."), dated August 27, 2010, ¶ 4.)

Upon payment in full of the primary note, Petitioner was to make payment to the Secretary at the "Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, S.W., Washington, DC 20410 or any such other place as [the Secretary] may designate in writing by notice to Borrower." (Sec'y Stat., ¶ 5, Ex. A, ¶ 4(B).) Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent. (Sec'y Stat., ¶ 6, Ex. B, Porter Decl., ¶ 5.)

The Secretary alleges that Petitioner is currently in default on the Note and that Petitioner is indebted to HUD in the following amounts:

- (a) \$3,658.05 as the unpaid principal balance as of July 31, 2010;
- (b) \$9.15 as the unpaid interest on the principal balance at 1% per annum through July 31, 2010; and
- (c) interest on said principal balance from August 1, 2010 at 1% per annum until paid.

(Sec'y Stat., ¶ 7; Porter Decl., ¶ 5.) A Notice of Intent to Collect by Treasury Offset, dated July 26, 2010, was sent to Petitioner by HUD. (Sec'y Stat., ¶ 8; Porter Decl., ¶ 6.)

Discussion

Petitioner has acknowledged that she signed the Note which is the subject of these proceedings. However, Petitioner argues that (1) she paid the subject debt when she refinanced her mortgage; (2) her husband in whose name the primary note was allegedly made is now deceased; (3) the debt was fraudulently created; and (4) the offset would create a financial hardship. (5) Furthermore, Petitioner offers to pay \$25 a month as a repayment arrangement.

First, Petitioner alleges that she paid the subject debt when she refinanced her mortgage. Petitioner states, "I have spoken with Manager at the PNC Mortgage Company which . . . stated these charges allocations should have been paid at closing and to contact Real Estate Agent for further details which hopefully will have these documents before 9/29/10 and also check with Real Estate Agent for further details on closing." (Petitioner's Request for Hearing ("Pet'r Hr'g

Req.”), filed August 30, 2010.) Petitioner, however, has not submitted any documentation in support of the assertion that her liability under the Note has been fully satisfied.

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.) In it, the Secretary asserts, “Neither the Note nor HUD authorized the loan company to receive payments on HUD’s behalf. Moreover, Petitioner has produced no evidence to show that HUD directed them to make payment to the loan company.” (Sec’y Stat., ¶ 11, Ex. A, ¶ 4(B).) “More importantly,” the Secretary continues, “Petitioner has produced no evidence to show that she actually paid HUD’s debt to the loan company.” (Sec’y Stat., ¶ 12.)

For Petitioner not to be held liable for the full amount of the Note, there must either be a release in writing from the Secretary specifically discharging Petitioner’s obligation, or valuable consideration accepted by the Secretary from Petitioner, which would indicate an intent to release. *See Beckie Thompson*, HUDBCA No. 04-D-CH-EE015 (September 20, 2004); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986). Petitioner has submitted no evidence of payment made to the Secretary or of a release of the Note, and so remains legally obligated for the repayment of the Note.

Second, Petitioner asserts that she does not owe the debt that is the subject of this proceeding because her husband in whose name the primary note was allegedly made is now deceased: “This letter is referring to a partial payment claim that should have been paid in full at time of refinancing loan as this home was in my husband[’]s name which is now deceased as of 3/11/07 and wasn[’]t in my name at the time of loan taken out as I wasn[’]t working at this time due to health issues.” (Petitioner’s Letter (“Pet’r Ltr.”), dated July 31, 2010.) The note at issue, however, is the Partial Claims Promissory Note which was clearly signed by Petitioner alone. (See Sec’y Stat., Ex. A.) Although Petitioner’s husband is now deceased, as a borrower on the Note, Petitioner remains liable for repayment of this debt. Even if it was Petitioner’s husband who was responsible for the primary note, it is Petitioner who remains liable on the contract at issue, and the Secretary has the right to enforce the obligation against her.

Third, Petitioner suggests that the debt was fraudulently created. Petitioner states, “this Mortgage [] obviously is no longer in existence and perhaps misrepresented my loan due to fraudulence as company states that I signed an agreement with 2nd Mortgage stating that I would pay any claims due which was closing on 12/2009 which all expenses should have been paid but this claim due is from 1st Mortgage which was in deceased husband[’]s name[,] George Anthony Lopes.” (Pet’r Ltr.) Petitioner, however, has provided no evidence to prove her claim of fraud.

While Petitioner has failed to submit any documentary evidence to substantiate that the debt is unenforceable due to fraud, the Secretary has submitted a copy of the Note at issue that Petitioner signed on June 23, 2008. (See Sec’y Stat., Ex. A.) According to the terms of the Note, Petitioner agreed and accepted the terms and covenants contained therein, one of which showed that “in return for a loan received from the [Secretary], [Petitioner] promises to pay the principal sum of Three Thousand Six Hundred Fifty-Eight Dollars and Five Cents (U.S. \$3658.05) to the order of [the Secretary].” (*Id.*) Thus, this Office finds that while the Secretary

has successfully met his burden of proof that no fraud was involved, Petitioner has failed to submit the documentary evidence necessary to support her claim that she is paying back a loan obtained by fraudulent means.

Fourth, Petitioner claims that the offset would create a financial hardship for her: "I don[']t have enough to make payments on anything as living below poverty level now." (Pet'r Ltr.) Unfortunately, evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable in administrative offset cases such as this. *Thelma Smith*, HUDBCA No. 00-A-NY-AA8 (June 19, 2000) (citing *Della Coleman*, HUDBCA No. 99-C-SE-Y73 (Feb. 23, 2000)). Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *Raymond Kovalski*, HUDBCA No. 87-1681-G18 (Dec. 8, 1986). Furthermore, this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Should Petitioner wish to initiate, continue, or renew discussion regarding settlement terms, Petitioner may wish to discuss this matter with counsel for the Secretary in this proceeding, or to file a HUD Title I Financial Statement (HUD Form 56142) with Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. Mr. West's telephone number is 1-800-669-5152, extension 4206.

Finally, Petitioner offers to pay \$25 a month to repay the debt: "I wanted to set up payments with HUD for \$25." (Pet'r Hr'g Req.) The Secretary responds, "Petitioner's offer of \$25 a month as a repayment arrangement is unacceptable to HUD." (Sec'y Stat., ¶ 14, Ex. B, Porter Decl., ¶ 8.) This Office, however, is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. However, Petitioner may wish to discuss this matter with Mr. West at the contact information above. Petitioner may also request a review of her financial status by submitting to HUD the HUD Form 56142.

In conclusion, Petitioner has failed to file sufficient documentary evidence to support her argument that the debt that is the subject of this proceeding is not past due or is unenforceable, and has therefore failed to meet her burden of proof as set forth in 24 C.F.R. § 17.152. In the absence of sufficient documentary evidence filed by Petitioner, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary.

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

H. Alexander Manuel
Administrative Judge

October 8, 2010