



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

In the Matter of:

CONNIE L. BETTENCOURT,
Petitioner

HUDOA No. 10-M-NY-LL16
Claim No. 7-705614100A

DECISION, RULING AND ORDER UPON RECONSIDERATION

On June 10, 2010, this Office issued a Decision and Order (“Decision”) finding that the debt in this case is legally enforceable and that there is no statute of limitations period that precludes the Secretary from seeking collection by means of administrative offset in this case. *Connie L. Bettencourt*, HUDOA No, 10-M-NY-LL16 (June 10, 2010). On June 17, 2010, Petitioner filed a letter with this Office, which is deemed to be a Motion for Reconsideration. (Petitioner’s Letter (“Pet’r’s Letter”), filed June 17, 2010.) In Petitioner’s Letter, Petitioner reiterates her assertion that a four-year statute of limitations set forth by Texas law is applicable to the debt in this case. Petitioner also claims that the Secretary is also barred by the 10-year statute of limitations set forth in 31 U.S.C. §3716. Petitioner’s Motion for Reconsideration is GRANTED to the extent necessary to address and dismiss Petitioner’s claims.

Petitioner concedes that 31 U.S.C. §3716 is applicable to the collection of debts by administrative offset. (Pet’r’s Letter.) However, Petitioner states that §3716 provides a 10-year statute of limitations for administrative offset actions. The current text of 31 U.S.C. §3716, which was also cited in the Decision, reads:

“(e)(1) Notwithstanding any other provision of law, regulation, or administrative limitation, no limitation on the period within which an offset may be initiated or taken pursuant to this section shall be effective.” 31 U.S.C. §3716(e)(1)(2008).

Therefore, Texas law applying a four-year statute of limitations is preempted because it is in direct conflict with the plain language of 31 U.S.C. §3716. *Bettencourt* at 3 (citing *Edgar v. Mite Corporation*, 457 U.S. 624, 631 (1982)).

Petitioner also cites two decisions by this Office, *Martha Nesser* HUDBCA No. 02-C-NY-CC055 (July 18, 2003) and *Jack McAdoo* HUDBCA No. 03-A-NY-DD021 (May 13, 2005) to support her argument that the Secretary is barred by a statute of limitations. Petitioner’s

reliance on these cases is also misplaced. Both *Nesser* and *McAdoo* were decided prior to the 2008 amendment to 31 U.S.C. §3716. Since the amendment, this Office has consistently held that there is no statute of limitations for administrative offset cases. *See, Karen T. Jackson*, HUDOA No. 09-H-NY-AWG87 (June 3, 2009).

Petitioner also claims, "...nor do I believe I was given adequate time to respond to said debt." (Pet'r's Letter.) Pursuant to 24 C.F.R. §17.152, Petitioner was given 65 calendar days from the date of the Notice of Intent to submit evidence showing that all or part of the debt is not past-due or not legally enforceable. 24 C.F.R. §17.152(b) (2007). A Notice of Intent to Collect by Treasury Offset ("Notice of Intent") dated January 27, 2010 was sent to Petitioner. (Secretary's Statement ("Sec'y Stat."), filed March 3, 2010 ¶ 5.) On March 12, 2010, this Office, issued an Order requiring Petitioner to file documentary evidence on or before April 9, 2010. Petitioner's documentary evidence was filed on April 2, 2010. (Petitioner's Response to Secretary's Statement ("Pet'r's Resp."), filed April 2, 2010.) No further documents were submitted by Petitioner, nor did Petitioner request an extension of time to submit additional documentary evidence. Accordingly, I find that Petitioner's claim that she did not have adequate time to respond to be without merit. Therefore, it is hereby

ORDERED that the administrative offset order authorized by the Decision and Order, In re: *Connie L. Bettencourt*, HUDOA No. 10-M-NY-LL16, dated June 10, 2010 shall not be modified and shall remain in full force and effect.



H. Alexander Manuel
Administrative Judge

June 25, 2010