



**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

Connie L. Bettencourt
27 Candlewood Court
Newman, Georgia 30265

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 to recover a claimed past-due, legally enforceable debt owed to HUD by referring the matter to the U.S. Department of the Treasury.

Petitioner requested a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD in this case. The Office of Appeals has been designated to conduct a hearing to determine whether the alleged debt 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 February 17, 2010, until the issuance of a written decision by the Administrative Judge. See 24 C.F.R. § 17.156.

Background

On April 16, 1988, Petitioner (also known as Connie L. Haigood) executed and delivered a Manufactured Home Retail Installment Contract and Security Agreement ("Note") to Brigadier Homes of Waco in the amount of \$19,850.00, 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 March 3, 2010, ¶ 2, Ex. A.) Contemporaneously, on April 16, 1988, the Note was assigned by Brigadier Homes of Waco to Green Tree Acceptance of Texas, Inc. (Sec'y. Stat., ¶ 3, Ex. A.)

Petitioner failed to make payment on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54, on August 28, 1992, Green Tree Financial Corporation a/k/a Green Tree Acceptance of Texas, Inc. assigned the Note to the United States of America. (Sec'y. Stat., ¶ 4, Ex. C, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated February 26, 2010, ¶ 3.) The Secretary is the holder of the Note on behalf of the United States of America. (*Id.*)

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. (Sec'y. Stat., ¶ 5; Dillon Decl., ¶ 4.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD. The Secretary alleges that Petitioner is in default on the Note and is indebted to HUD in the following amounts:

- (a) \$6,866.57 as the unpaid principal balance as of August 31, 2009;
- (b) \$2,328.91 as the unpaid interest on the principal balance at 6% per annum through August 31, 2009; and
- (c) interest on said principal balance from September 1, 2009 at 6% per annum until paid.

(Sec'y. Stat., ¶ 5; Dillon Decl., ¶ 4.)

A Notice of Intent to Collect by Treasury Offset dated January 27, 2010 was sent to Petitioner. (Sec'y. Stat., ¶ 6; Dillon Decl., ¶ 5.) On January 29, 2010, Judge Vanessa L. Hall issued a Decision and Order in Petitioner's Administrative Wage Garnishment appeal finding the debt exists and is enforceable in the amount alleged by the Secretary. (Sec'y. Stat., ¶ 7.)

Discussion

Petitioner does not challenge the existence of the debt. Rather, Petitioner disputes the legal enforceability of the debt. (Petitioner's Request for Hearing ("Pet'r. Hr'g. Req."), filed February 11, 2010.)

Petitioner's legal arguments can be summarized as follows: The Note signed by Petitioner and her former husband was subject to Texas law. (Petitioner's Response to Secretary's Statement ("Pet'r. Resp."), filed April 2, 2010, ¶ 3, Ex. A.) The applicable statute of limitations in Texas at the time the Note was signed was four years. (Pet'r. Resp., ¶ 7, Ex. B.) The Secretary was bound to the original agreement when HUD became the holder of the Note. (Pet'r. Resp., ¶ 10.) The federal law that was in effect when the Note was signed required the Secretary to obtain a judgment against Petitioner before taking further steps. (Pet'r. Resp. ¶ 11.) There is no legal authority to revive uncollectible debts or override state law. (Pet'r. Resp. ¶ 17.) The four year statute of limitations, from Texas state law controls, and the debt is now moot. (Pet'r. Resp. ¶ 21.)

The United States Constitution states that "...this Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land..." U.S. Const. art. 6, cl. 2. This part of the Constitution is commonly known as the "Supremacy Clause." The Supreme Court has held that "a state statute is void to the extent that it actually conflicts with a valid federal statute." *Edgar v. Mite Corporation*, 457 U.S. 624, 631 (1982). This action was brought pursuant to 31 United States Code § 3716. This statute states that "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). This clause in the statute is in direct conflict with the Texas state statute of limitations. Therefore, the Secretary correctly discounted Texas State law and applied federal law that does not impose a statute of limitations in administrative offset cases such as this. Therefore, I find that HUD's claim is not barred by a statute of limitations and is thus legally enforceable against Petitioner.

Petitioner has cited no persuasive legal authority to support her position that the Government may only proceed in federal administrative offset cases where it has first obtained a state court judgment proving that Petitioner owes the debt. Indeed, that is not the precedent of this office, and we hold that no such requirement exists under our interpretation of 31 U.S.C. § 3716 and § 3720A.

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

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 Petitioners to the extent authorized by law.

H. Alexander Manuel

H. Alexander Manuel
Administrative Judge

June 10, 2010