



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

In the Matter of:

**BERNADETTE AND RANDY MARTINEZ,**

Petitioners.

HUDOA No. 10-M-NY-LL21  
Claim No. 7-210064040A

Bernadette and Randy Martinez  
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*Pro Se*

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For the Secretary

**DECISION AND ORDER**

On or about February 1, 2010, Petitioners were 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 Petitioners in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD.

On February 17, 2010, Petitioners 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 Petitioners’ 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 19, 2010.

## Background

On April 5, 2002, Petitioners executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$2,724.34, in exchange for foreclosure relief being granted by the Secretary. (Secretary's Statement ("Sec'y Stat."), filed August 17, 2010, ¶ 2, Ex. A.) Paragraph 4 of the Note cites specific events which make the debt become due and payable, one of these events being the payment in full of the primary note, which was insured against default by the Secretary. (*Id.* at ¶ 3, Ex. A, ¶ 4(A)(i), (iii).) On or about June 7, 2007, the FHA insurance on Petitioners' primary note was terminated when the lender indicated the note was paid in full. (Sec'y Stat., ¶ 4; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated February 26, 2010, ¶ 4.)

Upon payment in full of the primary note, Petitioners were to make payment to the Secretary at the "Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, 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).) Petitioners failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioners' debt to HUD is delinquent. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 5.)

The Secretary has made efforts to collect from Petitioners but has been unsuccessful. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 5.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioners are indebted to HUD in the following amounts:

- (a) \$2,724.34 as the unpaid principal balance as of January 31, 2010;
- (b) \$20.43 as the unpaid interest on the principal balance at 3% per annum through January 31, 2010; and
- (c) interest on said principal balance from February 1, 2010 at 3% per annum until paid.

(*Id.*) A Notice of Intent to Collect by Treasury Offset, dated February 1, 2010, was sent to each Petitioner by HUD. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 6.)

## Discussion

Petitioners argue that the alleged debt to HUD is unenforceable because (1) Petitioners paid the subject debt when they refinanced their mortgage with Access National Mortgage; (2) Petitioners never received a notice of payment due from 1999 to 2010 and are unable to locate documents pertaining to the alleged debt; and (3) the Secretary's proposed repayment schedule would result in financial hardship for Petitioners. (Petitioners' Request for Hearing ("Pet'r Hr'g Req."), filed February 17, 2010.)

First, Petitioners assert that they paid the subject debt when they refinanced their mortgage: "I had a refinance done and everything I assumed was paid. . . I hope that you can get

the money from the finance company that was to pay it[.] [T]he following is who need[s] to pay: Access National Mortgage[,] 2701 Alcott Street[,] Suite 367, Denver[,] Colorado. . . ." (*Id.*)

The Secretary responds that Petitioners are mistaken in their claim that they paid the subject debt. The Secretary asserts, "Upon payment in full of Petitioners' primary FHA insured mortgage, Petitioners were to make payment to HUD in the manner specified in the Subordinate Note. Neither the Note nor HUD authorized Access National Mortgage to receive payments on HUD's behalf. Moreover, Petitioners have produced no evidence to show that HUD directed them to make payment to Access National Mortgage. More importantly, Petitioners have produced no evidence to show that they actually paid HUD's debt to Access National Mortgage and HUD has received no payments from Access National Mortgage on Petitioners' behalf." (Sec'y Stat., ¶¶ 10-12, Ex. A, 4(B).)

This Office has ruled that in order to be discharged from their obligation to repay the alleged debt, Petitioners must have been issued a release, in writing, from HUD. *In re Juanita Mason*, HUDOA No. 08-H-NY-AWG70 (December 8, 2008). Petitioners have not filed any such release in this case and have failed to provide sufficient evidence to show that the alleged debt to HUD in this case has been repaid. In the absence of a release from HUD discharging Petitioners from their obligation to repay the debt, this Office finds that Petitioners remain indebted to HUD.

Second, Petitioners argue they were "never sent a notice of payment due from 1999 [to] 2010" and "have tried to search for proof, but . . . have been unsuccessful." (Pet'r Hr'g Req.) Petitioners add, "I (Bernadette) was never notified in the past eleven years, and out of the blue received this letter Notice of Intent to Collect by Treasury Offset." (Petitioners' Letter ("Pet'r Ltr."), dated March 15, 2010; see also Petitioners' Letter ("Pet'r Mar. Ltr."), filed March 23, 2010.)

This Office, however, finds that the documentary evidence submitted by the Secretary indicates that Petitioners received notice of, and documents pertaining to, the alleged debt in this case. According to the Secretary, HUD's initial Demand Notices were mailed to Petitioners on November 16, 1999, and a Notice of Intent to Collect by Treasury Offset on or about February 1, 2010. (Sec'y Stat., ¶ 8; Dillon Decl., ¶¶ 6-7.) Between 1999 and 2010, Petitioners were aware of the alleged debt, as indicated by a copy of the Note, signed by both Petitioners on April 5, 2002, promising to pay the principal sum of \$2,724.34 at the time and place indicated on the Note; Petitioners had promised to make payment to the Secretary at "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" upon payment in full of the primary note, which occurred on or about June 7, 2007. (Sec'y Stat., ¶¶ 3-5.) Furthermore, on, March 18, 2010, this Office issued an Order directing the Secretary to file a certification that it has sent a copy of all documents in HUD's possession, that relate to the alleged debt in this case, to Petitioners on or before April 9, 2010. (Order, dated March 24, 2010.) On August 17, 2010, the Secretary filed the Secretary's Statement in this case, together with a certification that he has provided to Petitioners, all documents in his possession that are relevant to the alleged debt in this case. (Sec'y Stat., ¶ 13, Ex. C, Secretary's Certification of Compliance.)

Finally, Petitioners assert that the offset would result in financial hardship for Petitioners: "I am working very hard and cannot afford any unexpected financial surprises." (Pet'r Hr'g Req.) 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 Petitioners wish to initiate, continue, or renew discussion regarding settlement terms, Petitioners 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.

Petitioners were previously advised by this Office in the Order, dated March 24, 2010, that this Office has no authority to consider financial hardships that may or may not be incurred by Petitioners as a result of the imposition of administrative offset of federal payments otherwise due to them. Any terms for repayment of debts owed to HUD must be directed to the HUD Financial Operations Center at the address and phone number shown on the Notice of Intent to Collect by Treasury Offset sent to Petitioners on February 1, 2010. (Order, dated March 24, 2010.)

In conclusion, Petitioners have failed to file sufficient documentary evidence to support their argument that the debt that is the subject of this proceeding is not past due or is unenforceable, and have therefore failed to meet their burden of proof as set forth in 24 C.F.R. § 17.152. On three separate occasions, this Office ordered Petitioners to file documentary evidence to prove that the debt in this case is not enforceable or not past due. (Notice of Docketing, Order and Stay of Referral, dated February 19, 2010; Order, dated March 18, 2010, affirmed by Order, dated March 24, 2010; Order, dated August 20, 2010.) The August 20<sup>th</sup> Order stated, "Failure to comply with this Order shall result in a decision based on the documents in the record of this proceeding." Petitioners failed to respond to the August 20<sup>th</sup> Order by failing to file documentary evidence proving Petitioners are not indebted to HUD and that the alleged debt is not past due or legally enforceable against Petitioners. 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 in the amount claimed by the Secretary.

### ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset is VACATED. For the reasons stated above, it is hereby

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset to the extent authorized by law.



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H. Alexander Manuel  
Administrative Judge

October 21, 2010