



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

In the Matter of:

ELIZABETH S. HAYES,

Petitioner

HUDOA No. 10-M-NY-LL23
Claim No. 7-8027890600A

Elizabeth S. Hayes
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Pro se

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For the Secretary

DECISION AND ORDER

On or about January 27, 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 February 17, 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 February 19, 2010.

Background

On or about July 31, 1990, Petitioner executed and delivered a Manufactured Home Retail Installment Contract and Security Agreement (“Note”) to Walker Mobile Homes Inc. in the amount of \$13,134.00, 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 5, 2010, ¶ 2, Ex. A.) Contemporaneously, on July 31, 1990, the Note was assigned by Walker Mobile Homes Inc. to Green Tree Acceptance of North Carolina, Inc. (*Id.* at ¶ 3, Ex. A.)

Petitioner failed to make payment on the Note as agreed. Consequently, on October 17, 2000, in accordance with 24 C.F.R. 201.54, Conseco Finance Servicing Corporation a/k/a Green Tree Financial Corporation f/k/a Green Tree Acceptance of North Carolina, Inc. assigned the Note to the United States of America. (*Id.* at ¶ 4, Ex. B.) The Secretary is the holder of the note on behalf of the United States of America. (*Id.*)

Petitioner is currently in default on the Note. HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (*Id.* at ¶ 5; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), ¶ 4.) Petitioner is alleged to be indebted to the Secretary in the following amounts:

- (a) \$4,031.31 as the unpaid principal balance as of January 31, 2010;
- (b) \$1,754.13 as the unpaid interest on the principal balance at 6% per annum through January 31, 2010; and
- (c) interest on said principal balance from February 1, 2010 at 6% per annum until paid.

(Sec’y Stat., ¶ 5; Dillon Decl., ¶ 4.) On or about January 27, 2010, a Notice of Intent to Collect by Treasury Offset was sent to Petitioner by HUD. (Sec’y Stat., ¶ 6; Dillon Decl., ¶ 5.) On February 26, 2010, HUD sent to Petitioner a copy of her file. (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 6.)

Discussion

Petitioner denies that she owes the debt in this case. Petitioner states that she “has no idea of the cause of this debt in relation to her.” (Petitioner’s Request for Hearing (“Pet’r Hr’g Req.”), filed February 17, 2010.)

On three separate occasions, this Office ordered Petitioner 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 (“March Order”), dated March 5, 2010; and Order (“April Order”), dated April 2, 2010.) The March Order stated, “Failure to comply with this Order shall result in a decision based upon the documents in the record of this proceeding,” and the April Order stated, “Failure to Comply with this order may result in a decision in favor of the Secretary in this case.” (March Order; April Order.) Petitioner failed to respond to all three Orders.

Petitioner has, therefore, not met her burden to prove that the debt in this case is not past due or legally enforceable. In the absence of documentary evidence to support Petitioner's position, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner as set forth in the Notice of Intent to Collect by Treasury Offset.

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
Administrative Judge

July 28, 2010