



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

In the Matter of:

CLARETHA K. WADE,

Petitioner

HUDOA No. 10-M-NY-LL33
Claim No. 7-704052790B

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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 22, 2010.

Background

On June 20, 1988, Petitioner executed and delivered to CNS Federal Credit Union a Promissory Note, Disclosure Statement/ Security Agreement (“Note”) in the amount of \$17,500.00, 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, ¶ 1, Ex. 1; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), ¶ 3.) Petitioner failed to make payments as agreed in the Note. Consequently, CNS Federal Credit Union assigned the Note to the Secretary pursuant to the provisions of the Title 1 Insurance Program. (Sec’y Stat., ¶ 3; Dillon Decl., ¶ 3.)

The Secretary has filed a Statement, with documentary evidence, in support of his position that Petitioner is currently in default on the Note and that Petitioner is indebted to HUD in the following amounts:

- (a) \$19,566.52 as the unpaid principal balance as of February 28, 2010;
- (b) \$18,025.24 as interest on the principal balance at 8% per annum through February 28, 2010; and
- (c) interest on the principal balance at 8% per annum from March 1, 2010, until paid.

(Sec’y Stat., ¶ 4; Dillon Decl., ¶ 4.) The Secretary has made efforts to collect on the Note from Petitioner, but Petitioner remains in default. (Sec’y Stat., ¶ 4; Dillon Decl., ¶ 4.)

A Notice of Intent to Collect by Treasury Offset, dated January 27, 2010, was sent to Petitioner. (Sec’y Stat., ¶ 5; Dillon Decl., ¶ 5.)

Discussion

31 U.S.C. §§ 3716 and 3720A authorize federal agencies to collect debts owed to the United States Government by means of administrative offset. The burden of proof is on the alleged debtor to show that the debt claimed by the Secretary is unenforceable or not past due. 24 C.F.R. § 17.152(b). Failure to provide documentary evidence to meet this burden shall result in a dismissal of the debtor’s request for review. *Id.*

Petitioner has acknowledged that she signed the Note which is the subject of these proceedings. However, she argues that (1) the offset is “not enforceable due to the ten year statute of limitations” (Petitioner’s Statement of Support with Evidence (“Pet’r Stat.”), filed April 19, 2010, ¶ 7.); (2) the offset “would certainly create a financial hardship” (*Id.*); (3) “HUD did not fully utilize all of the resources available to [HUD] to collect [the debt] from [her] ex-husband” (*Id.* at ¶ 1.); and (4) “HUD recouped all monies paid to the credit union when the property was sold in 1996.” (*Id.* at ¶ 7.)

First, Petitioner argues that the debt cannot be collected due to a ten-year statute of limitations: “[A]nother income tax refunds offset, IRS and credit bureau reporting, and offset of

my retirement proceeds is not enforceable due to the ten year of statute of limitations and precedent cases decided by HUD Administrative Judges mentioned above.” (Pet’r Stat.) Petitioner asserts that HUD waited twenty years to seek to enforce collection of the debt: “I was most recently informed in a Notice of Intent to Collect by Treasury Offset dated January 27, 2010 that I would once again be referred to the Treasury Offset Program. This is almost 20 years since the loan was defaulted. I believe that the first time that I was issued one of these letters was in 1991. Since that time, my pay was garnished, IRS tax refund was coded to be taken away every year” (*Id.* at ¶ 1.) Petitioner relies on Cora O. Davis, HUDBCA No. 87-2513-H46, Jack McAdoo, HUDBCA No. 03-A-NY-DD021 and Sharon Dell, HUDBCA No. 90-493-L436, as well as 31 U.S.C. § 3720, 31 U.S.C. § 3716(e)(1) and 26 C.F.R. § 301.6402-6(c) for the proposition that a claim outstanding for more than 10 years may not be collected by means of administrative offset, and that the ten-year statute of limitations begins to run from the date of default. (*Id.* at ¶ 6.) The date of default, according to Petitioner, was July 1, 1990. (*Id.*)

However, the pertinent Federal statute applicable to collection of debts by administrative offset clearly provides that “[a]fter trying to collect a claim from a person under § 3711(a) of this title, the head of an executive . . . agency may collect the claim by administrative offset.” 31 U.S.C. § 3716(a) (2008). Furthermore, this statute provides that “[n]otwithstanding 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 means that there is no time limitation restricting the right of the Government to collect this debt by means of administrative offset. Therefore, irrespective of a twenty-year delay in seeking to enforce collection of this debt, I find that the Secretary is not barred by statute of limitations from collecting the alleged debt by means of administrative offset.

Second, Petitioner claims that “[a]ny amount of money offset from [her] retirement pay would certainly create a financial hardship as [she does] not receive enough to pay all of [her] monthly bills as [she] receive[s] approximately one-fourth of the income that [she] had prior to retirement.” (Pet’r Stat., ¶ 7.) 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.

Third, Petitioner asserts that she does not owe the debt that is the subject of this proceeding because she is now divorced from Jonathan Black, who is in possession of the house:

“HUD did not fully utilize all of the resources available to [HUD] to collect [the debt] from [her] ex-husband who continues to be a business owner and was at one time receiving federal government contracts.” (*Id.* at ¶ 1.) Petitioner asserts that after marriage with Mr. Black in 1986, she and Mr. Black obtained a home improvement loan from SC [sic] Federal Credit Union on June 20, 1988. They separated in December of 1989. Petitioner further asserts that Mr. Black “insisted on keeping the marital home and the court obliged requiring him to take the property out of [her] name and holding [her] ‘harmless’ in [their] divorce.” (*Id.* at ¶ 2.) Petitioner continues, “The loan went into default on June 1, 1990.” (*Id.*)

Although Petitioner is now divorced, as a borrower on the Note, Petitioner remains liable for repayment of this debt. (Sec’y Stat., ¶ 2, Ex. A.) Even Petitioner admits that she is the borrower: “HUD files show I made every attempt imaginable to have the mortgage paid and taken out of my name. It never happened.” (Pet’r Stat., ¶ 2.) The Secretary may therefore proceed against the borrower for the full amount of the debt. Even if Petitioner has released her ownership interest in the property to Mr. Black, this action does not operate to release HUD’s claim against Petitioner. Petitioner has submitted no evidence to establish the existence of a valid release, and remains legally obligated for the repayment of this loan. Petitioner may be able to enforce the divorce decree against Mr. Black in state or local court to recover monies paid to HUD by her to satisfy this obligation. However, Petitioner remains liable on the contract at issue, and the Secretary has the right to enforce the obligation against her.

Fourth, Petitioner asserts that the debt that is the subject of this proceeding was satisfied by proceeds from the sale of her home: “I believe that HUD recouped all monies paid to the credit union when the property was sold in 1996.” (*Id.* at ¶ 7.) Petitioner, however, has not submitted any documentation in support of the assertion that her liability under the Note has been fully satisfied.

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.

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, 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 Petitioner to the extent authorized by law.



H. Alexander Manuel
Administrative Judge

June 8, 2010