



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

In the Matter of:

**Debra L. Ulven aka Debra Hurst,**  
Petitioner

HUDOA No. 10-M-NY-LL37  
Claim No. 7-80236284OA

James A. Davis, Esquire  
1835 East Military Ave., Ste 113  
Fremont, NE 68025

For Petitioner

James W. Webster, Esquire  
U.S. Department of Housing and  
Urban Development  
Office of the Assistant General Counsel  
for Midwest Field Offices  
77 West Jackson Boulevard  
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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" or "the Secretary") 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 May 17, 2010, Petitioner made a request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.152. The administrative judges of the Office of Appeals 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, this Office temporarily stayed referral of the debt to the U.S. Department of Treasury for offset on May 20, 2010. (Notice of Docketing, Order and Stay of Referral ("Notice"), dated May 20, 2010.)

## Background

On January 19, 1996, Petitioner executed a Fixed Rate Note ("Note") in the amount of \$14,000.00 in favor of Union Financial Corporation. (Sec'y Stat. ¶ 1; Sec'y Stat. Ex. 1, Note, ¶ 1.) Petitioner defaulted on the Note and, as a result, the Note was assigned to HUD by U.S. Bank Trust National Association f/k/a First Trust of New York, National Association, under the regulations governing the Title I Insurance Program. (Sec'y Stat. Ex. 2, Dillon Decl., ¶ 3.)

HUD has attempted to collect this alleged debt from Petitioner but has been unsuccessful. (Sec'y Stat. ¶ 3.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$11,993.01 as the unpaid principal balance as of April 30, 2010;
- (b) \$3,953.06 as the unpaid interest on the principal balance at 5% per annum through April 30, 2010; and
- (c) interest on said principal balance from May 1, 2010 at 5% per annum until paid.

(Dillon Decl. ¶ 4.) A Notice of Intent to Collect by Treasury Offset dated January 27, 2010<sup>1</sup>, was sent to Petitioner. (Dillon Decl. ¶ 5.)

## Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides federal agencies with the remedy of administrative offset of federal payments for the collection of debts owed to the United States Government. In these cases, Petitioner bears the initial burden of submitting evidence to prove that the debt is not past due or legally enforceable. 24 C.F.R. § 17.152(b); Juan Velazquez, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

Petitioner does not dispute the existence of the debt. Rather, Petitioner claims that the debt is owed by her ex-husband pursuant to a divorce decree, and that, "[Petitioner's ex-husband], who has a full-time job as a janitor at the public school system should be garnished, and not [Petitioner]." (Pet'r's Hr'g Req., Ex. E., Letter from James A. Davis, dated February 11, 2010.) In support of her argument, Petitioner included a copy of a Decree of Dissolution issued by the Superior Court of Washington, County of Spokane on September 16, 1998, and a Request for Innocent Spouse Relief that Petitioner alleges was filed with the IRS. (Pet'r's Hr'g Req. *Attachs.*) However, this Office has consistently held that "[w]here a property settlement or divorce decree purports to release one spouse from a joint obligation, the claims of the existing creditors against that spouse are not affected unless the creditors were parties to the action." (emphasis in original) *In re Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016, (May 10, 2004) (quoting, *In re Deborah Gage*, HUDBCA No. 86-1727-F286 (January 14, 1986)).

Furthermore, the fact that Petitioner's ex-husband has a full-time job is insufficient to show that the debt cannot be enforced against Petitioner. As a cosigner on the Note, Petitioner is

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<sup>1</sup> The Secretary's Statement incorrectly states that the Notice of Intent was dated February 1, 2010. (Sec'y Stat. ¶ 5.)

jointly and severally liable for the obligation. *Id.* at 4. “Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together.” *Id.* (quoting, *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-C314, at 3 (July 15, 1987)). Petitioner may wish to enforce the divorce decree against her ex-husband in state or local court to recover monies paid to HUD by her to satisfy this obligation. Nevertheless, Petitioner remains jointly and severally liable to the contract at issue and the Secretary has the right to enforce the obligation against her individually.

Petitioner also argues that “the type of action proposed by [HUD] would create a financial hardship on her.” (Pet’r’s Hr’g Req., Ex. E, Letter from James A. Davis, dated February 11, 2010.) This Office acknowledges Petitioner’s financial circumstances, but the law provides that “in administrative offset cases evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable.” *In re Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005); *In re Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996); *In re Charles Lomax*, HUDBCA No. 87-2357-G679 (February 3, 1987). 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 (December 8, 1986). Furthermore, no regulation or statute currently exists that permits financial hardship to be considered as a basis for determining whether a debt is past due and enforceable in cases involving debt collection by means of administrative offset. Thus, consistent with case law precedent and statutory limitations, this Office finds that financial hardship cannot be considered as a defense in this case as the debt owed by Petitioner is sought to be collected by means of administrative 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 hereby **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.



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H. Alexander Manuel  
Administrative Judge

October 5, 2010