



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

In the Matter of:

Benjamin S. Peterkin,
Petitioner

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

Benjamin S. Peterkin
P.O. Box 105
Lady Lake, FL 32158

Pro se

Julia M. Murray, Esq.
U.S. Department of Housing and
Urban Development
Office of the Assistant General Counsel
for New York/New Jersey Offices
26 Federal Plaza, Room 3237
New York, NY 10278-0068

For the Secretary

DECISION AND ORDER

On 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" 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 February 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. § 17.170(b). 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 February 23, 2010. (Notice of Docketing, Order and Stay of Referral ("Notice"), dated February 23, 2010.)

Background

On February 28, 1997, Petitioner executed and delivered a Note to Crossland Mortgage Corporation in the amount of \$20,000, 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 16, 2010, ¶ 2.) The Note was subsequently assigned by Crossland Mortgage Corporation to Fannie Mae. (Sec'y Stat. ¶ 3.) Petitioner failed to make payment on the Note as agreed and on October 25, 1999, Crossland Mortgage Corporation, as attorney-in-fact for Fannie Mae, assigned the Note to the United States of America. (Sec'y Stat. ¶ 4.)

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$4,312.74 as the unpaid principal balance as of February 28, 2010;
- (b) \$179.70 as the unpaid interest on the principal balance at 5% per annum through February 28, 2010; and
- (c) interest on said principal balance from March 1, 2010, at 5% per annum until paid.

(Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center, HUD ("Dillon Decl."), dated March 10, 2010, ¶ 4.)

A Notice of Intent to Collect by Treasury Offset dated November 20, 2000 was sent to Petitioner. (Sec'y Stat. ¶ 6.) Petitioner did not exercise his right to a review, or enter into a written repayment agreement with HUD. (Sec'y Stat. ¶ 6.) Consequently, on January 29, 2001, Petitioner's alleged debt was referred to the Treasury Offset Program for collection. (*Id.*) Between September 7, 2001 through May 1, 2009, HUD received 49 Treasury Offset Program payments from Petitioner totaling \$24,009.80. (Sec'y Stat. ¶ 7.) These payments were credited towards the Petitioner's debt and are reflected in the outstanding balance now due. (*Id.*) A second Notice of Intent to Collect by Treasury Offset dated January 27, 2010 was sent to Petitioner. (Sec'y Stat. ¶ 8.) On March 11, 2010, HUD's Financial Operations Center, Asset Recovery Division sent all pertinent documents related to the subject debt to Petitioner. (Sec'y Stat. ¶ 9.)

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).

On February 17, 2010, this Office received a letter from Petitioner that was deemed to be a Request for Hearing. (Petitioner's Hearing Request (Pet'r's Hr'g Req.), filed February 17, 2010.) In the letter, Petitioner states:

"I do not believe I owe this debt because you all have been collecting my income tax refund and a portion of my Social Security Disability since April 2006. All of that was cleared and terminated in 2009."

(Pet'r's Hr'g Req.)

On March 18, 2010, this Office ordered Petitioner to file, on or before April 19, 2010, documentary evidence proving that all or part of the alleged debt in this case is not past due or not legally enforceable against Petitioner. (Order, issued March 2010.) The Order also stated that "Failure to comply with this order will result in a decision based on the documents in the record of this proceeding." (emphasis in original)

This Office has held that documentary evidence proving the discharge of the debt should be in the form of either a release in writing from the lender specifically discharging Petitioner's obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016, (May 10, 2004). Petitioner has failed to submit any such evidence and has, therefore, failed to comply with the Order issued by this Office. This Office has held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable." *Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing, *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Since Petitioner does not offer any evidence that would prove that the debt is unenforceable or not past due, I find that Petitioner's argument fails for want of proof.

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.



H. Alexander Manuel
Administrative Judge

August 4, 2010