



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

In the Matter of:

LAURA J. OWENS,

Petitioner

HUDOA No. 10-M-NY-LL53
Claim No. 7-704305740B

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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 23, 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 24, 2010.

Background

On April 28, 1988, Petitioner executed and delivered to Owens Home Improvement Inc. a Retail Installment Contract, Note & Disclosure Statement ("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 30, 2010, ¶ 2, Ex. A.) Contemporaneously, Owens Home Improvement Inc. assigned the Note to Remodelers National Funding Corp. (*Id.* at ¶ 3, Ex. A.) Petitioner failed to make payments as agreed in the Note. (*Id.* at ¶ 4.) Consequently, on November 15, 1990, Remodelers National Funding Corp. assigned the Note to the United States of America pursuant to 24 C.F.R. § 201.54. (*Id.* at ¶ 4, Ex. A.) The Secretary is the holder of the Note on behalf of the United States of America. (*Id.* at ¶ 4.)

The Secretary has attempted to collect on the Note from Petitioner, but Petitioner remains in default. (*Id.* at ¶ 5; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 4.) The Secretary has filed a Statement, with documentary evidence, in support of his position that Petitioner is indebted to HUD in the following amounts:

- (a) \$14,068.25 as the unpaid principal balance as of February 28, 2010;
- (b) \$11,161.01 as the unpaid 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., ¶ 5; Dillon Decl., ¶ 4.)

A Notice of Intent to Collect by Treasury Offset, dated January 27, 2010, was sent to Petitioner. (Sec'y Stat., ¶ 6; 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 not denied that she signed the Note which is the subject of these proceedings. However, she argues that (1) the offset is not enforceable due to a ten-year statute of limitations; and (2) the offset would create a financial hardship.

First, Petitioner argues that the debt cannot be collected due to a ten-year statute of limitations: “24 C.F.R. [§] 17.160 provides a limitation of ten (10) years from the time the government’s right to collect the debt accrues. [T]he Notice of Intent to Collect by Treasury Offset . . . states that the default date was May 15, 1990. [T]herefore, under federal law,¹ the government’s right to collect this debt became time barred on or about May 16, 2000.” (Petitioner’s Reply To Secretary’s Statement That Petitioner’s Debt Is Past Due And Legally Enforceable (“Pet’r Reply”), ¶¶ 5-7, filed April 12, 2010.)

The Secretary responds, “Statutes of limitations do not terminate or extinguish debts. They merely place limitations on the time within which an action to recover the debt may be brought.” (Supplemental Secretary’s Statement (“Suppl. Sec’y Stat.”), filed May 26, 2010, ¶ 8.) Moreover, the relevant Federal statute, “31 U.S.C. § 3716(e)(1), as amended, eliminated the limitation period on actions to recover delinquent debts, and revived all actions that would otherwise have been time barred so long as the debt was ‘outstanding’ on the date of enactment. The debt owed by Petitioner to HUD falls within the reach and scope of the amended statute, since it was ‘outstanding,’ i.e., had not been paid, compromised, or extinguished on June 18, 2008. *Accord In the Matter of Vickie C. Tucker*, Postal Service Docket No. DCA 09-58 (May 28, 2009).” (*Id.* at ¶¶ 9, 11.)

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. This also means that the statute trumps any regulations in violation of the statute, including 24 C.F.R. § 17.160 cited by Petitioner. 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.

Furthermore, Petitioner argues “[t]hat an effort by the government, if any, to claim a change in the bar date promulgated by the government after May 16, 2000 is ineffective as to Petitioner as an *ex post facto* law.” (Pet’r Reply, ¶ 8.) Petitioner’s argument, however, is without merit because the modification of the statute of limitations does not involve criminal law. Where Congress enacted legislation eliminating all statutes of limitation on actions to recover on defaulted student loans and revived all actions which would have otherwise been time-barred, and a petitioner asserted that Congress’ modification of the statute of limitations violates the *Ex Post Facto* clause of the United States Constitution, the federal court held that

¹ Petitioner had first asserted a statute of limitations as a defense under Arkansas Code Annotated § 16-56-111, but later claimed that federal law, not Arkansas law, provides a statute of limitations: “[T]he government asserts that the laws of the state of Arkansas do not apply to matters governed by the Federal Constitution or acts of Congress. . . . Petitioner recognizes the primacy of Federal Law has been well established since General Lee surrendered his sword at Appomattox Court House. . . . 24 C.F.R. Section 17.160 provides a limitation of ten (10) years from the time the government’s right to collect the debt accrues.” (Pet’r Reply, ¶¶ 2-5; Petitioner’s Petition (“Pet’r Pet.”), filed March 9, 2010, ¶ 5.)

“[t]his argument is . . . without merit, because it has been recognized for almost 200 years that the Ex Post Facto clause only applies to penal statutes.” *United States v. Singer*, 943 F. Supp. 9, 12 (D.D.C. 1996); *Collins v. Youngblood*, 497 U.S. 37, 41 (1990) (“Although the Latin phrase ‘ex post facto’ literally encompasses any law passed ‘after the fact,’ it has long been recognized by the Court that the constitutional prohibition on *ex post facto* laws applies only to penal statutes.”)

Second, Petitioner states that paying the debt would cause her financial hardship. Petitioner states that “[she] is an elderly lady (66 years of age). Her sole source of income is her social security check of \$943.00 per month. . . [S]he does not have the ability to pay nor any non-exempt financial assets to collect from.” (Petitioner’s Request for Hearing (“Pet’r Hr’g Req.”), filed February 23, 2010.) Petitioner has filed no documentary evidence in support of her financial hardship claim. 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.

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 25, 2010