



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

In the Matter of:

**KATHLEEN VISCONTO,**

Petitioner

HUDOA No. 10-M-NY-LL57  
Claim No. 7-711156530B

Kathleen Visconto  
4468 Almond Street  
Philadelphia, PA 19137

*Pro Se*

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

For the Secretary

**DECISION AND ORDER**

On or about February 1, 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 June 18, 1985, Petitioner executed and delivered to a Note to The Philadelphia National Bank in the amount of \$15,000.00, 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 That Petitioner's Debt Is Past Due And Legally Enforceable ("Sec'y Stat."), filed March 9, 2010, ¶ 1, Ex. A.) Petitioner failed to make payments as agreed in the Note. On September 23, 1985, the Note was assigned by The Philadelphia National Bank to the Redevelopment Authority of the City of Philadelphia. (*Id.* at ¶ 3, Ex. B.) On October 11, 1991, the Redevelopment Authority of the City of Philadelphia attempted to assign the Note to CoreStates Bank, N.A., but instead assigned the Note to "CoreStates, N.A." (*Id.* at ¶ 4, Ex. A, p. 2.) Consequently, on May 30, 1997, the Redevelopment Authority of the City of Philadelphia executed a "Reassignment of Note and Mortgage" in which it assigned the Note executed by Petitioner to CoreStates Bank, N.A. (*Id.* at ¶ 5, Ex. A, p.2, Ex. B.)

Petitioner failed to make payment on the Note as agreed. (*Id.* at ¶ 6.) Consequently, CoreStates Bank, N.A. assigned the Note to the United States of America pursuant to 24 C.F.R. 201.54. (*Id.*, Ex. C.) The Secretary is the holder of the Note on behalf of the United States of America. (*Id.*)

The Secretary has made efforts to collect on the Note from Petitioner, but Petitioner remains in default. (*Id.* at ¶ 7.) 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) \$5,150.05 as the unpaid principal balance as of February 28, 2010;
- (b) \$3,025.86 as the unpaid interest on the principal balance at 5% per annum through February 28, 2010; and
- (c) interest on the principal balance at 5% per annum from March 1, 2010 until paid.

(Sec'y Stat., ¶ 7; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 4.) A Notice of Intent to Collect by Treasury Offset, dated February 1, 2010, was sent to Petitioner. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 5.)

In her request for a hearing, Petitioner filed a letter prepared and signed by her husband, James Viscontto, disputing the amount of accrued interest on the debt. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 6.) On January 21, 2010, Judge Vanessa L. Hall issued a Decision and Order in Mr. Viscontto's Administrative Wage Garnishment appeal finding the debt is legally enforceable in the amount claimed by the Secretary. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 6.)

## Discussion

Petitioner does not deny the existence or delinquency of the debt that is the subject of this proceeding, but Petitioner contends that the alleged debt is unenforceable because Petitioner did not know where to make payments on the Note due to incorrect assignments. Petitioner asserts as follows:

But per your documentation . . . , on Oct[ober] 11, 1991[,] [t]he Redevelopment Authority of the City of Phila[delphia] incorrectly assigned this Note to “Core State, N.A.” I never received any correspondence that this was taking place. And again I could not make any payments. Had I been informed[,] I would have continued to pay [‘]til this was done. Finally in 1997[,] a full 6 years later[,] [the Note] is finally assigned correctly to “Core State Bank NA” . . . . [T]hen [o]n November 24, 1997[,] only 4 months later[,] [the Note was] transferr[ed] to HUD. I never received any documentation of all these transfers[,] so I could not pay on the loan!!

(Petitioner’s Request for Hearing, filed February 23, 2010.)

On four 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 24, 2010; Order, dated March 9, 2010; Order, dated April 1, 2010; Order, dated July 30, 2010.) The April 1<sup>st</sup> Order stated, “Failure to comply with this Order may result in a decision based upon the documents in the record of this proceeding.” Again, the July 30<sup>th</sup> Order stated, “Failure to comply with this Order shall result in a decision based on the documents in the record of this proceeding.” Petitioner failed to respond to all of the Orders.

The Secretary, on the other hand, has filed documentary evidence to support his claim that the debt is enforceable. The Secretary argues that “Petitioner’s claim that she did not know where to make payments on the [N]ote due to multiple assignments is without merit and inconsistent with the documentary evidence.” (Supplemental Secretary’s Statement That Petitioner’s Debt Is Past Due And Legally Enforceable (“Suppl. Sec’y Stat.”), filed July 27, 2010, ¶ 3.) First, “[t]here is no HUD Title I Regulation that requires the lender to send notice to the borrower advising that the Note has been assigned.” (Supplemental Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Suppl. Dillon Decl.”), dated July 20, 2010, ¶ 3.) Regardless, the Secretary asserts that Petitioner was aware of the assignment to CoreStates Bank, N.A. and to HUD, and of where to make payments on the subject debt. (Suppl. Sec’y Stat., ¶ 9; Suppl. Dillon Decl., ¶ 3.)

In evidence, the Secretary has submitted documentary evidence showing that Petitioner continued to pay through the date of the assignment of the Note to CoreStates Bank, N.A., until she defaulted on July 31, 1997, the total number of payments on the Note being 143. (Suppl. Sec’y Stat., ¶¶ 4-5; Suppl. Dillon Decl., ¶ 4.) Moreover, when Petitioner filed a chapter 13 bankruptcy petition on May 15, 1997, a bankruptcy proof of claim containing Corestate Mortgage Service Corporation’s address was filed with the United States Bankruptcy Court on June 26, 1997, and a copy was sent to Petitioner’s attorney, David J. Averett, Esq. (Suppl. Sec’y Stat., ¶ 6; Suppl. Dillon Decl., ¶ 5, Ex. A.) Finally, after the Note was assigned to HUD, an automated Demand Notice was issued to Petitioner on February 1, 1998. (Suppl. Sec’y Stat., ¶ 8; Suppl. Dillon Decl., ¶ 6, Ex. B.) Petitioner subsequently made at least one voluntary payment to HUD on April 9, 1998. (*Id.*) The foregoing facts, the Secretary argues, contradict Petitioner’s claim that she did not know where to make payments on the subject debt. (Suppl. Sec’y Stat., ¶ 9.)

On the other hand, Petitioner has 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

October 21, 2010