



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

In the Matter of:

Jerry Minchew,
Petitioner

HUDOA No. 10-M-NY-LL58
Claim No. 7-7037521708

Jerry Minchew
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Soddy Daisy, TN 37379

Pro se

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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 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 25, 2010. (Notice of Docketing, Order and Stay of Referral ("Notice"), dated February 25, 2010.)

Background

On June 12, 1980, Petitioner executed and delivered a Manufactured Home Retail Instrument Sales Contract Security Agreement and Disclosure Statement ("Note") to Art's Mobile Homes, Inc. in the amount of \$18,000, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat. ¶ 2.) Contemporaneously, on June 12, 1980, the Note was assigned by Art's Mobile Homes, Inc. to Green Tree Acceptance, Inc. (Sec'y Stat. ¶ 3; Sec'y Stat. Ex. A, at pp. 2-3.) Petitioner failed to make payment on the Note as agreed and, as a result, Green Tree Acceptance, Inc. assigned the Note to the United States of America on June 18, 1990 pursuant to 24 C.F.R. § 201.54. (Sec'y Stat. ¶ 4; Sec'y Stat. Ex. B.)

The Secretary has filed a statement alleging that Petitioner is currently in default on the Note and indebted to HUD in the following amounts:

- (a) \$9,149.71 as the unpaid principal balance as of February 28, 2010;
- (b) \$10,015.77 as the unpaid interest on the principal balance at 9% per annum through February 28, 2010; and
- (c) interest on said principal balance from March 1, 2010, at 9% per annum until paid.

(Sec'y Stat. ¶ 5; Sec'y Stat. Ex. C, ¶ 4.)

A Notice of Intent to Collect by Treasury Offset dated January 27, 2010 was sent to Petitioner. (Sec'y Stat. ¶ 6.) On March 4, 2010, HUD's Financial Operations Center, Asset Recovery Division sent Petitioner a copy of the Purchase Agreement relating to the sale of Petitioner's manufactured home after repossession. (Sec'y Stat. ¶ 7.)

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 first argues that, "the debt is no longer payable." (Pet'r's Hr'g Req.) In support of this argument, Petitioner submitted as documentary evidence a credit report for Vickie W. Minchew and Petitioner explains that, "...the Trans-Union credit report submitted is not mine but my wife's. The reason that her credit report was submitted is because the account never showed up on my credit report." (Pet'r's Letter, Attach. Credit Report, Apr. 5, 2010; Pet'r's Letter at 1, May 27, 2010.) The credit report shows HUD as a creditor with the pay status of "PAID OR PAYING AS AGREED." (Pet'r's Letter, Attach. Credit Report at 2.) Petitioner argues that, "if the debt had been in default since 1996 then it was not 'Paid or Paying as Agreed.'" (Pet'r's Letter at 2, May 27, 2010.)

The Secretary points out that HUD's creditor information on the credit report was allegedly last updated in July 1996. (Sec'y Stat. ¶ 4; Pet'r's Letter, Attach. Credit Report at 2, Apr. 2010.) The Secretary argues that the status of the debt as stated on the credit report refers to the fact that Petitioner had entered into a voluntary repayment plan with HUD and had been making voluntary payments up until April 22, 1996. (Suppl. Sec'y Stat. ¶ 4; Suppl. Sec'y Stat. Ex. A, ¶ 3.) In support of his argument, the Secretary submitted the Case Reconstruction Report, which shows that although Petitioner's last scheduled payment was made on April 22, 1996, HUD continued to expect that payments would be made by Petitioner. (Suppl. Sec'y Stat. Ex. A Title I Defaulted Loans Case Reconstruction Report at pp.4-5.) The Secretary's argument and evidence is persuasive and shows that Petitioner's debt in this case has not been paid in full.

Petitioner also argues that "[m]y income tax was seized through 1999. When that stopped I had every reason to believe that the debt had been satisfied." (Pet'r's Letter at 2 (May 27, 2010.) Petitioner's belief that his debt had been satisfied when the seizures of his income tax refund ceased is not sufficient to show that the debt had been paid in full. This Office has held that a written release is necessary to establish that a debtor is no longer liable for payment. *In re Charles Snyder and Tammy Snyder*, HUDBCA No. 04-K-CH-EE018 at 3 (June 17, 2004) (citing *In re Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 at 2 (January 27, 1988)). A written release "must be in writing or supported by sufficient valid or valuable consideration." *Id.* Absent a written release from HUD, Petitioner's reliance on the fact that the administrative offset of his income tax returns ceased in 1999 is insufficient to prove that he was released from his debt. Accordingly, this Office finds that the debt in this case is past due.

Lastly, Petitioner cites *In re Sharon Dell*, HUDBCA No. 90-4913-L436 (February 7, 1990) and 31 U.S.C. § 3716(c)(1), and claims that the Secretary is precluded by a 10-year statute of limitations from collecting the debt in this case. (Pet'r's Letter ¶ 3 (March 25, 2010.)) However, Petitioner's reliance on the statute and *Sharon Dell* is misplaced because on May 22, 2008, the statute was amended to eliminate the 10-year statute of limitation. *See*, Pub. L. No. 110-234, § 14219(a), 112 Stat. 923.

Further, Petitioner's argument that, "there is a 'grandfather clause' which exempts past situations but does not apply to future situations" also fails to prove that the debt in this case is not legally enforceable. The language of the amendment revived the Secretary's claim in this case by stating that, "the amendment...shall apply to any debt outstanding on or after the date of the enactment of this Act." Pub. L. No. 110-234, § 14219(b), 112 Stat. 923. As the Secretary has demonstrated that the debt in this case remains outstanding, this Office finds that the statute shall be given a retroactive effect and revive the Secretary's claim. *See, United States v. Singer*, 943 F. Supp. 9 (D.D.C. 1996) (holding that legislation eliminating all statutes of limitation on actions to recover on defaulted student loans applied retroactively to revive the cause of action that would otherwise have been time barred).

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 17, 2010