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

In the Matter of:

DIJARIA GILLIAM,

Petitioner

HUDOA No. 11-H-CH-LL04
Claim No. 7-711727530A

Dijaria Gilliam
11300 W. Parmer Lane #1621
Cedar Park, TX 78613

Pro se

Lisa Adams, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
For Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60606

For the Secretary

DECISION AND ORDER

Dijaria Gilliam, a/k/a Dijaria A. Gilliam ("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 December 6, 2010, Petitioner made a timely 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 December 7, 2010. (Notice of Docketing, Order, and Stay of Referral, issued December 7, 2010, 2010.)

Background

On August 20, 1996 Petitioner executed and delivered to Infinity Capital Corporation an installment note ("Note") in the amount of $25,000.00 for a home improvement loan that 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 February 7, 2011, ¶ 2; Ex. A., Note.) Thereafter, Infinity Capital Corporation assigned the Note to TMS Mortgage Inc., A New Jersey Corporation d/b/a The Money Store. (Sec'y. Stat., ¶ 2; Note, attach.) The Note was later assigned to Dauphin Deposit Bank and Trust Company as Co-Trustee under the Pooling and Servicing Agreement dated February 28, 1997. (Sec'y. Stat., ¶ 2; Note, Attach.)

Petitioner failed to make payments as agreed in the Note. (Sec'y. Stat., ¶ 3.) Consequently, Dauphin Deposit Bank and Trust Company as a Co-Trustee under the Pooling and Servicing Agreement assigned the Note to the United States of America in accordance with 24 C.F.R. § 201.54. (*Id.*; Ex. A1, Assignment.) The Secretary is the holder of the Note on behalf of the United States of America. (Sec'y. Stat., ¶ 3.) The Secretary alleges that Petitioner is currently in default on the Note. (*Id.* at 4.) The Secretary has made efforts to collect from Petitioner by means other than administrative wage garnishment but has been unsuccessful. (*Id.* at ¶ 4.) The Secretary alleges that Petitioner is justly indebted to HUD in the following amounts:

(a) $24,461.42 as the unpaid principal balance as of December 31, 2010;
(b) $14,586.74 as the unpaid principal balance at 5% per annum through December 31, 2010; and
(c) interest on said principal balance from January 1, 2011 at 5% per annum until paid.

(Sec'y. Stat. ¶ 5; Dillon Decl. ¶ 4.)

A Notice of Intent to Collect by Treasury Offset dated August 2, 2010 was sent to Petitioner. (Sec'y. Stat. ¶ 6.) Petitioner copied HUD Debt Servicing Representative Sharon King on her December 1, 2010 fax to the HUD Office of Appeals. (*Id.* at ¶ 7.) HUD responded to Petitioner's letter on December 9, 2010. (*Id.*; Ex. A, Letter.)

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 administrative offset 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). In the present case, Petitioner contends that the alleged debt is unenforceable because: 1) the alleged debt had been satisfied; 2) the alleged debt was discharged by bankruptcy; and, 3) the signature on the Note was not Petitioner's signature.

Petitioner first claims that this alleged debt "was bonded and lein [sic] satisfied – I don't owe anything. The original note was lost – everything is satisfied. Per Karen Mesta – Stewart Title Co." (Pet'r's Letter ("Dec. 10 Letter"), filed December 10, 2010.) As support, Petitioner filed a copy of the *Bond for Lost Deed of Trust and Note and/or Lost Deed of Trust* ("Bond") in which it stated that "the Note secured by the Deed has been fully satisfied and the present beneficiary of record cannot be located after diligent search." (Dec. 10 Letter, Bond.) The copy of the Bond from the title company that was submitted by Petitioner is insufficient as evidence that constitutes a release from HUD as the lender. This Office has consistently maintained that in order to prove that Petitioner is no longer liable for the debt, "[t]here must either be 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." (emphasis added) *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004) (citing *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986; *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255F262 (February 28, 1986)). Generally, pursuant to California Civil Code § 2941.7(a),[1] the Bond only operates to release the lien on the property and does not release Petitioner from her obligation to pay the debt to HUD.

The Secretary has produced, on the other hand, a copy of the Note along with evidence of subsequent assignments, that all provide sufficient proof that the Note was not only not lost but further proves that Petitioner remains legally obligated to pay the subject debt. The evidence presented by Petitioner has failed to sufficiently rebut or refute the evidence presented by the Secretary. Therefore I find that Petitioner has failed to prove that she has been either released from the alleged debt owed to HUD or has fully satisfied the debt that is the subject of this proceeding, and as a result, Petitioner remains legally obligated to pay the subject debt.

Petitioner next claims that:

> [T]he debt [HUD is] trying to collect on has been discharged in United States Bankruptcy Court 6/29/01 (see attached info). Please review copy of this discharge. Please cease from any and all collection efforts. If you need any additional info, please contact my attny [sic] Donna Jones Esq."[2] (emphasis in original)

(Pet'r's Letter ("Dec. 17 Letter"), filed December 17, 2010.)

---

[1] Section 2971.7 of the California Civil Code provides: Whenever the obligation secured by a mortgage or deed of trust has been fully satisfied and the present mortgagee or beneficiary of record cannot be located after diligent search, or refuses to execute and deliver a proper certificate of discharge or request for reconveyance, or whenever a specified balance, including principal and interest, remains due and the mortgagor or trustor or the mortgagor's or trustor's successor in interest cannot, after diligent search, locate the then mortgagee or beneficiary of record, *the lien of any mortgage or deed of trust shall be released when the mortgagor or trustor or the mortgagor's or trustor's successor in interest records or causes to be recorded, in the office of the county recorder of the county in which the encumbered property is located, a corporate bond accompanied by a declaration*, as specified in subdivision (b), and with respect to a deed of trust, a reconveyance as hereinafter provided. (emphasis added)

[2] There is no indication based upon the record that Donna Jones, Esq. has entered an appearance on behalf of Petitioner in this proceeding.

As support, Petitioner provides a copy of an Order Discharging Debtor after Completion of Chapter 13 Plan for Cases Filed after November 5, 1990 ("Order of Discharge") and a Certificate of Service listing the Money Store as a creditor that was served with the Order of Discharge. (Dec. 17 Letter, Attachm'ts.)

In response, the Secretary acknowledges that "Petitioner filed a Chapter 13 Bankruptcy with the Central District of Riverside California on December 31, 1997, case number 97-35299." (Sec'y. Stat., ¶ 10.) The Secretary further acknowledges that, "the Trustee disbursed payments totaling $1,577.45 which was the principal amount of arrears ($1,335.28) and interest ([$]242.17)." (Sec'y. Stat., ¶ 10; Exh'ts. F1-F3.) The Secretary provided, as support, a copy of the Proof of Claim filed by the Money Store with the Bankruptcy Court that reflects the "amount of arrearage" for the loan as totaling $1,335.28. (Sec'y. Stat., at Ex. E, Proof of Claim.) Based upon a review of the Proof of Claim, a balance still remains on the debt that is the subject of this proceeding. There is no indication from the Proof of Claim that, during Petitioner's Chapter 13 proceeding, a payment was disbursed for the balance remaining on the subject debt in order to discharge the debt. Instead, during the bankruptcy proceeding, the subject debt was merely "cured the default" by paying arrearages on the loan in order to make the debt current as required under 11 U.S.C. § 1322(b)(3).[3] Therefore, I find that Petitioner has failed to prove that the bankruptcy proceeding discharged her entire debt in this case, and as a result, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

Petitioner finally claims that "on advice of counsel, this is not my signature." (Pet'r's Letter ("Dec. 6 Letter"), filed December 6, 2010.) As evidence, Petitioner provided two copies of the same signature page for the *Request for Notice of Default and Foreclosure Under Superior Mortgages or Deeds of Trust* that each reflected Petitioner's signature. (*Id.* Attachm'ts.) This evidence was, however, insufficient in establishing that Petitioner's signature was not authentic.

In response, the Secretary notes that the signatures on the Deed of Trust and Title I Loan Compliance Notice were notarized by the state of Washington Notary Public Y.J. Brown and submits identical copies of the documents. (Sec'y. Stat., ¶ 8; Ex. B1 and C.) This Office has found that a notary's certification is "prima facie evidence of the truth of the facts stated within

---

[3] **§ 1322. Contents of plan**

(a) The plan—

(1) shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan; **(2)** shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; **(3)** if the plan classifies claims, shall provide the same treatment for each claim within a particular class; and, **(4)** notwithstanding any other provision of this section, may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(b) Subject to subsections (a) and (c) of this section, the plan may--...**(3)** provide for the curing or waiving of any default;....

the document." *Justito Poblete*, HUDBCA No. 98-A-SE-W302 (citing *Ryan v. Bank of Italy Nat'l Trust and Sav. Assoc.,* 289 P. 386 (Cal. Dist. Ct. App. 1930)); see also *Joseph Sotello,* HUDOA No. 10-H-CH-LL75, dated April 8, 2011, citing *Butler v. Encyclopedia Britannica, Inc.,* 41 F.3d 285, 294-95 (the court held that a notary public's certificate of acknowledgment, regular on its face, carries a strong presumption of validity.) Therefore, Petitioner must produce evidence to "rebut the presumption of authenticity of the notarized signature" on the Note related to the alleged debt in this case. *Id.*

In this case, Petitioner has failed to produce sufficient evidence to prove her claim of forgery. Petitioner was issued an Order to submit certain evidence considered to be necessary in order to more sufficiently support her claim of forgery. Petitioner was ordered to file:

-copies of any police report or other proof that Petitioner reported the alleged forgery involved in this case to law enforcement authorities or to the lender;
-expert analysis and written opinion of Petitioner's handwriting and the disputed signature on the loan agreement;
-copies of any complaint or civil actions filed in a court by Petitioner involving the alleged forgery of his name on the HUD note that is the subject of this proceeding;
-a copy of the entire promissory note allegedly signed by Petitioner.

(Order, dated April 26, 2011.)

To date, Petitioner has failed to comply with the Order issued on April 26, 2011. Therefore, I find that Petitioner has failed to rebut the presumption of authenticity of her notarized signature on the Note related to the alleged debt, and thus, her claim of forgery fails for lack of proof.

As a final point, Petitioner claims that "this alleged debt – has expired per. Jones attny [sic]– per statute of limitations." (emphasis in original) (Pet'r's Letter ("Dec. 27 Letter"), filed December 27, 2010.) Federal law once prohibited the use of administrative offset to collect non-tax federal debts outstanding for more than 10 years. However, that prohibition was repealed effective June 18, 2008. *See* Pub. L. No. 110-234, § 14219(b), 112 Stat. 923. Federal regulation now provides that HUD is authorized to submit debts to the U.S. Department of Treasury for collection by tax refund "irrespective of the amount of time the debt has been outstanding." 31 C.F.R. § 285.2(d)(6)(i) (2010). Section 285.2(d)(6)(i) (2010) further provides that, "[a]ccordingly, all nontax debts, including debts that were delinquent for ten years or longer prior to December 29, 2009 may be collected by tax refund offset." *Id.* Therefore, consistent with the provisions of 31 C.F.R. § 285.2(d)(6)(i) (2010), the Secretary is authorized to refer this alleged debt to the U.S. Department of Treasury for collection by tax refund.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding is 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.

Vanessa L. Hall
Administrative Judge

May 17, 2011