



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

In the Matter of:

Betty Watkins,

Petitioner

HUDOA No. 11-H-CH-LL21
Claim No. 770796032OB

Betty Watkins
P.O. Box 12072
Longview, TX 75607-2072

Pro se

Amy Jo Conroy, Esq.
U.S. Department of Housing and
Urban Development
Office of Regional Counsel
For Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

On March 2, 2011, Petitioner was notified, pursuant to 31 U.S.C. §§ 3716 and 3720A, that the Secretary of the U.S. Department of Housing and Urban Development 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.

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 March 3, 2011. (Notice of Docketing, Order, and Stay of Referral, issued March 3, 2011.)

Background

HUD holds a Retail Installment Contract ("Note") that was executed by Petitioner, and assigned to the HUD Secretary pursuant to the regulations governing the Title I Insurance Program. (Secretary's Statement ("Sec'y. Stat."), filed August 11, 2011, ¶ 1; Ex. 1, Note; Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of

HUD ("Dillon Decl."), dated March 17, 2011, ¶3.) After default by Petitioner, the Note was assigned by Resolution Trust Corporation, in its capacity as receiver of American Savings and Loan Association of Brazoria County, to Evanston Bank and further assigned to HUD. (Dillon Decl., ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains delinquent. The Secretary asserts that Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$3,443.50 as the unpaid principal balance as of February 28, 2011;
- (b) \$1,665.65 as the unpaid interest on the principal balance at 3% per annum through February 28, 2011; and
- (c) interest on said principal balance from March 1, 2011 at 3% per annum until paid.

(Sec'y. Stat. ¶ 3; Dillon Decl. ¶ 4.)

A Notice of Intent to Collect by Treasury Offset, dated February 14, 2011, was mailed to Petitioner on February 14, 2011. (Sec'y. Stat. ¶ 4; Dillon Decl. ¶ 5.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides Federal agencies with a remedy for the collection of debts owed to the United States Government. 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 does not dispute the existence or amount of the debt, or that the debt is currently past due. Rather, Petitioner asserts that she is not responsible for the debt because: (1) the home and its associated debts were assumed by her ex-husband; (2) the debt is barred by the statute of limitations; and (3) repayment of the alleged debt would create a financial hardship. (Pet'r.'s Hr'g. Req., p. 1, filed March 2, 2011.)

Petitioner first contends that her ex-husband "petitioned the courts for ownership of said property" in December, 1991, and "won the house and its amenities via court." (Petitioner's Letter, filed March 2, 2011.) Petitioner submits, as documentary evidence, an Assumption Special Warranty Deed ("Deed") purporting to convey all of Petitioner's interest in the home to her ex-husband in exchange for the ex-husband's "express promise ... evidenced by Grantee's signature herein below ... to assume, pay and discharge" the Note at issue here. (Pet'r.'s Hr'g. Req., p. 12.) The Deed further states that "[g]rantee, by his signature hereinbelow [sic], expressly agrees to indemnify and hold Grantor harmless from the payment of the promissory notes referenced herinabove." (*Id.*)

The Secretary, while not specifically addressing this issue in his Statement, did produce a copy of a Retail Installment Contract, signed by Petitioner and her then-husband, on March 19, 1982. Upon reviewing the Retail Installment Contract and the Assumption Special Warranty Deed, both documents support that Petitioner should remain legally obligated for the alleged debt.

Petitioner's Deed alone is insufficient as proof that the subject debt is unenforceable because the document itself was not signed by Petitioner's ex-husband. Petitioner does not offer any additional evidence that her ex-husband agreed to be bound by the terms of the Deed. But, even had Petitioner's ex-husband signed the Deed, it would not have yielded a different result. The transfer of the property by deed still does not release Petitioner from her legal obligation to pay the alleged debt because HUD was not a party to the deed agreement. (*See Monica Halley aka Monica Durkin*, 09-H-CH-AWG12, at p. 8.) (Petitioner not considered released from her debt obligation to HUD due to an agreement reached pursuant to a divorce decree because the court found "while the Petitioner may be divorced from her ex-spouse, neither the Secretary nor the lender was a party to the divorce action."). Here, to be released from this debt, Petitioner must present evidence of a written release of her liability from HUD, or evidence of valuable consideration paid to HUD in satisfaction of the debt. *Darla A. Rivera*, HUDBCA No. 99-C-NY-Y60 (Oct. 22, 1999) (citing *Ann Zamir* (Schultz), HUDBCA No. 99-A-NY-Y155 (Oct. 4, 1999); *James Ragsdale*, HUDBCA No. 88-3065-H580 (Aug. 3, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (Feb. 26, 1986) *See also* (*Felix Guanajuato*, HUDBCA No. 90-5207-L682 (May 4, 1990)). Petitioner has presented no such evidence of a written release in this case.

The Secretary's evidence, meanwhile, shows that Petitioner and her then husband both signed the Retail Installment Contract. It is well-settled that "co-signers of a loan are jointly and severally liable to the obligation, and as a result, a creditor may sue the parties to such obligation separately or together." *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987) (internal quotations omitted). As a result, the Secretary may proceed against either co-signer for the full amount of this debt. *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE16 (May 10, 2004). Therefore, consistent with case law precedent, I find that Petitioner, as a co-signer of the original Note, remains liable for the debt.

Petitioner next claims that collection of the alleged debt by means of administrative offset is barred by a statute of limitations. The U.S. Supreme Court has held that no statute of limitations exists in administrative proceedings. *B.P. America Prod. Co. v. Burton*, 549 U.S. 84 (2006). This Court, in *Angela Cortez*, HUDOA No. 09-M-CH-AWG102, has already recognized that while 31 U.S.C. [§] 3716(e)(1) previously contained a ten-year statute of limitations, the statute was amended in 2008 to eliminate limitations period.

The pertinent Federal statute applicable to collection of debts by administrative offset now 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. Therefore, consistent with statutory regulations and case law precedent, I find that the Secretary is not barred by statute of limitations from collecting the alleged debt by means of administrative offset.

Petitioner finally contends that an administrative offset would cause her financial hardship. (Petitioner's Second Letter, filed June 7, 2011.) 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 (December 8, 1986). While this Office acknowledges Petitioner's financial circumstances, the law provides "unfortunately, in administrative offset cases evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable." *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005); *Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996); *Charles Lomax*, HUDBCA No. 87-2357-G679 (February 3, 1987). Furthermore, no regulation or statute currently exist that permits financial hardship to be considered as a basis for determining whether a debt is past-due and enforceable in cases involving debt collection by means of administrative offset. Thus, consistent with case law precedent and statutory limitations, I find that financial hardship cannot be considered as a defense in this case.

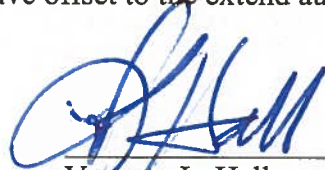
Finally, Petitioner requests the opportunity to enter into a repayment plan. (Petitioner's Second Letter.) Petitioner states that "I have no proof that I am not liable for the payment of this debt. I understand since John filed bankruptcy that you can't collect the money from him so that leaves me." While this Office is not authorized to extend, recommend, or accept any payment plan, or consider any settlement offer on behalf of HUD, Petitioner may wish to discuss this matter with either Counsel for the Secretary, or submit a HUD Office Title I Financial Statement (HUD Form 56142) to Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

ORDER

For the reasons set forth above, I find that 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 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 to the extent authorized by law.



Vanessa L. Hall
Administrative Judge

September 29, 2011