



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

In the Matter of:

Elizabeth Saligumba,

Petitioner

HUDOA No. 11-H-CH-LL27
Claim No. 7-711794771B

Elizabeth Saligumba
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Pro se

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For the Secretary

DECISION AND ORDER

Petitioner was notified, pursuant to 31 U.S.C. §§ 3761 and 3720A, that 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 March 15, 2011, Petitioner made a request for a hearing concerning the existence, amount, or enforceability of the debt allegedly owed to HUD. The Office of Appeal 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 117.153. 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 April 14, 2011. (Notice of Docketing, Order, and Stay of Referral, issued April 14, 2011.)

Background

On November 15, 1996, Petitioner executed and delivered to Professional Consolidated Financial Group, Inc., an installment note (“Note”) in the amount of \$25,000 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 May 3, 2011, ¶ 2.) Petitioner failed to make payments as agreed in the Note. (Id.) Consequently,

Master Financial, Inc., a California corporation, assigned the note to HUD in accordance with 24 C.F.R. § 201.54 (2010). (Id. at ¶ 3.) Petitioner is currently in default on the Note. The Secretary is the holder on behalf of the United States of America. (Id.) The Secretary has made efforts to collect from Petitioner but has been unsuccessful. (Id. at ¶ 4, Declaration of Brian Dillon, Acting Director, Asset Recovery Division, Financial Operations Center of HUD (“Dillon Decl.”), dated April 28, 2011, ¶ 4.)

Petitioner is justly indebted to HUD on the Note in the following amounts:

- (a) \$15,596.85 as the unpaid principal balance as of March 30, 2011;
- (b) \$947.99 as the unpaid interest on the principal balance at 5.0% per annum through March 30, 2011; and
- (c) interest on said principal balance from April 1, 2011 at 5.0% per annum until paid.

(Sec’y. Stat., ¶ 5; Dillon Decl., ¶ 4.)

A Due Process Notice, dated January 5, 1999, was sent to Petitioner. (Sec’y. Stat., ¶ 6; Dillon Decl., ¶ 5.) The debt was initially referred to the Treasury Offset Program (“TOP”) on March 15, 1999. (Id., at ¶ X, Dillon Decl., at ¶ 6.) HUD received 10 TOP offsets from Petitioner regarding this debt, totaling \$16,657.34, from March 1999 through March 2007. (Id.) No more offsets occurred after 2007, pursuant to 31 U.S.C. § 3716(e)(1), which then contained a 10-year statute of limitations on offset actions.

A renewed Notice of Intent to Collect by Treasury Offset was sent to Petitioner on February 22, 2010. The renewed debt was referred to TOP on May 3, 2010 and a TOP offset of \$5,108.00 was received from Petitioner on March 11, 2011.

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, the 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 asserts that “the 10-year statute of limitations in effect at the time of the default has already run, extinguishing HUD’s ability to continue collecting the debt.” (Petitioner’s Hearing Request (“Pet’r’s Hrg. Req.”), filed March 15, 2011.) As support, Petitioner relied upon the statute of limitations provided in 31 U.S.C. § 3716(e)(1). But, effective June 18, 2008, that statute was repealed. See Pub. L. No. 110-234, § 14219(b), 112 Stat. 923. 31 U.S.C. § 3716(e)(1) currently states: “notwithstanding 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.*” (emphasis added). The United States Supreme Court also held that no statute of limitations exists in administrative proceedings. *BP America Prod. Co. v. Burton*, 127 S. Ct. 638 (2006). As a result, it is now well-established that a statute of limitations for collection of a debt in an administrative proceeding eliminates the defense that collection of a debt is barred by the statute of limitations, but it does not eliminate the underlying debt itself. *Brent v. Bank of Washington*, 35 U.S. 596, 609 (1836); *Mascot Oil Co. v. United States*, 42 F.2d 309, 311 (Ct. Cl. 1930)(describing the inability of a statute of

limitations to extinguish the underlying debt as a principle “so well established as to need no citation of authorities.”), affirmed 282 U.S. 434 (1931).

The pre-2008 language of 31 U.S.C. § 3716(e)(1), upon which Petitioner relied as support, only precluded HUD from collecting the debt beyond the 10-year statute of limitations provided in that statute. That limitations period, again, did not have the effect of extinguishing the debt. Because the statute did not extinguish the debt, HUD retains its right to collect the debt by means of administrative offset. Accordingly, I find that the debt remains legally enforceable against Petitioner in the amount claimed by the Secretary.

Next, Petitioner states that:

I have attached copies of notices we received for the past ten years from IRS stating that HUD intercepted our returns. During that time, we have been trying to work a payment plan with HUD so we could settle this debt and each time we would be told to either pay in full the amount of \$25,000.00 or expect our taxes to be garnished all over again.

(Pet'r's. Hrg. Req.)

Petitioner further states, “We have attempted in good faith to settle the loan.” (Id.) While this Court is not authorized to extend, recommend, or accept any payment plan, or consider any settlement offer on behalf of HUD, Petitioners 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 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

August 26, 2011