



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

In the Matter of:

Linda Moore Scott,

Petitioner

HUDOA No. 11-H-CH-LL34
Claim No. 7-210069450B

Linda Moore Scott
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Pro se

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For the Secretary

DECISION AND ORDER

On May 24, 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 May 24, 2011. (Notice of Docketing, Order, and Stay of Referral, issued May 24, 2011.)

Background

On March 1, 2009, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") and Security Instrument to secure a partial claim paid on her behalf by the Secretary to pay the arrearages on her primary FHA-insured mortgage and avoid foreclosure. (Secretary's Statement ("Sec'y Stat.") ¶ 1, filed Aug. 11, 2011; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl.") ¶ 4, dated June 3, 2011.) The Subordinate Note cited specific events that made the debt become due and payable, one of those events being if Petitioner had paid in full all amounts due under the primary note and related mortgage insured by the Secretary. (Sec'y Stat., Exh. #2; Dillon Decl. ¶ 4.) On or about July 10, 2010, the FHA Insurance on the primary mortgage was terminated, as the lender indicated the mortgage was paid in full. (Sec'y Stat. ¶ 3; Dillon Decl. 4.)

HUD has attempted to collect the amounts due under the Subordinate Note, but Petitioner remains delinquent. (Sec'y Stat. ¶ 5; Dillon Decl. ¶ 5.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$4,925.60 as the unpaid principal balance as of May 30, 2011;
- (b) \$16.40 as the unpaid interest on the principal balance at 1% per annum through May 30, 2011; and
- (c) interest on said principal balance from May 30, 2011 at 1% per annum until paid.

(Sec'y Stat. ¶ 6; Dillon Decl. ¶ 5.)

A Notice of Intent to Collect by Treasury Offset, dated May 9, 2011, was sent to Petitioner. (Sec'y Stat., Exh. #2, Dillon Decl. ¶ 6.)¹

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 not legally enforceable. 24 C.F.R. § 17.152(b); *Juan Velazquez*, HUDBCA No. 02-C-CH-CC049 (Sept. 25, 2003). Petitioner objects to the enforceability of the debt, stating:

HUD approved the claim and we starting [sic] making payments with March 1, 2009 – our account was credited for the amount of the note meaning we did not owe it based on the help/assistance from the federal government to help homeowners in these critical economical time [sic] to avoid foreclosure of homeowners' property.

¹ The Court decided to rely upon May 9, 2011 as the more accurate mailing date for the Notice of Intent sent to Petitioner. The May 9, 2011 date, not the April 28, 2011 date referenced in the Secretary's Statement, is consistent with the date reflected on the Notice of Intent submitted by Petitioner in the record, and consistent with the date referenced in the Declaration of Brian Dillon relied upon by the Secretary.

(Pet'r's Hr'g Req., filed May 24, 2011.) In support of her position, Petitioner filed a release from Dovenmuehle Mortgage ("Dovenmuehle") to prove that Petitioner satisfied the full amount of the debt. (Petitioner's Documentary Evidence ("Pet'r's Evid."), filed July 15, 2011.) The release indicated that Petitioner satisfied a loan with a principal amount of \$44,700.00. (*Id.*) Petitioner also filed a letter from Dovenmuehle Mortgage that stated that Petitioner's loan was paid in full. (*Id.*)

In response to Petitioner's argument, the Secretary states that "the debt the Secretary is seeking to enforce is a separate and distinct debt as evidenced by the Note." (Sec'y Stat. ¶ 8.) The Secretary provided a copy of the Subordinate Note, dated March 1, 2009, which evidences a loan from the Secretary to Petitioner in the amount of \$4,925.60. (Sec'y Stat., Ex. 1.)

The record supports the Secretary's claim that he is seeking repayment of a "separate and distinct debt." (Sec'y Stat. ¶ 8.) While Petitioner's documentary evidence sufficiently supports Petitioner's claim that her lender, Dovenmuehle, was paid in full, Dovenmuehle was merely the lender on Petitioner's *primary mortgage*. HUD was the lender on Petitioner's Subordinate Note. (Sec'y Stat., Ex. 1.) Therefore, Petitioner's payment on her primary mortgage to Dovenmuehle did not release Petitioner from her indebtedness to HUD on the Subordinate Note. In fact, the terms of the Subordinate Note indicate that it would become due and payable when the "[b]orrower has paid in full all amounts due under the primary Note." (*Id.*) As a result, when Petitioner paid her primary mortgage in full on July 1, 2010, the Subordinate Note then became due and payable.

Further, the Subordinate Note specifically requires Petitioner to direct payments on the Note to "U.S. Department of HUD c/o C&L Service Corporation, 2488 E. 81st Street, Suite 700, Tulsa, OK 74137, or any such other place as Lender may designate in writing by notice to Borrower." (Sec'y Stat., Ex. 1.) Petitioner does not claim that HUD authorized Dovenmuehle to accept payments toward the Subordinate Note on its behalf. Therefore, any payments Petitioner remitted to Dovenmuehle were applied to the primary mortgage.

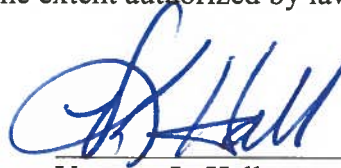
For Petitioner to prevail in this instance, HUD would had to have given Petitioner a written release, or other documentary evidence, indicating an intent to release, supported by legally sufficient consideration. *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (Oct. 4, 1999); *James Ragsdale*, HUDBCA 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). In this case, Petitioner has failed to demonstrate that she was released from her loan obligation or that any consideration has been conveyed to HUD in satisfaction of the alleged debt. Therefore, absent compelling evidence of a release in writing, I find that Petitioner is bound as a matter of fact and law by the terms of the Subordinate Note and the Secretary's right to proceed against Petitioner to collect this outstanding obligation is unimpaired. *Randy Tyer*, HUDBCA No. 89-4523-L12 (Mar. 15, 1990); *In re Martha Townsend*, HUDBCA No. 87-1695-G32 (Dec. 30, 1986).

ORDER

For the reasons set forth above, I find that the debt which 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**. The Secretary is hereby authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any federal payment due Petitioner. Therefore, 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 30, 2011