



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

In the Matter of:

**CAROLINE S. NOSWORTHY AKA CAROLINE S.
BURGESS,**

Petitioner.

HUDOA No. 11-H-CH-LL37
Claim No. 7-704602660B

DECISION AND ORDER

Caroline S. Nosworthy aka Caroline S. Burgess ("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 June 1, 2011, 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 June 2, 2011. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), 2.)

Background

On March 14, 1990, Petitioner executed and delivered to Green Tree Acceptance of Texas, Inc. ("Green Tree"), a Retail Installment Contract and Security Agreement (the "Note") in the amount of \$15,028.00 for a property improvement home loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. (Sec'y. Stat. ¶ 1; Sec'y. Stat., Ex. A, Note.) Petitioner failed to make payments as agreed in the Note. (Sec'y. Stat. ¶ 2.) After default by Petitioner, the Note was assigned to HUD by Green Tree Acceptance, Inc. under the regulations governing the Title I Insurance Program. (Sec'y. Stat., Ex. B, Declaration

of Gary Sautter, Acting Director, Asset Recovery Division, Financial Operations Center of H.U.D., (“Sautter Decl.”) ¶ 3.)

HUD has attempted to collect on the Note from Petitioner and alleges that Petitioner remains in default. (Sec’y. Stat., ¶ 3.) HUD alleges Petitioner is indebted to the Secretary in the following amounts:

- (a) \$15,045.19 as the unpaid principal balance as of May 31, 2011;
- (b) \$3,607.24 as the unpaid interest on the principal balance at 6% per annum through August 31, 2011; and
- (c) interest on said principal balance from September 1, 2011 at 6% per annum until paid.

(Sec’y. Stat., ¶ 3.)

On January 27, 2010, HUD sent a Notice of Intent to Collect by Treasury Offset to Petitioner at 3127 Pebble Beach Drive, Farmers Branch, TX. (Dillon Decl., ¶ 5.) The Post Office returned the Notice stamped “attempted not known.” (Dillon Decl., Ex. A). Consequently HUD, on February 22, 2010, obtained an Experian Social Search Report. (Sec’y. Stat., ¶ 5; Sec’y. Stat., Ex. B). The report indicated that Petitioner’s most current address was “2093 FM 279 Ben Wheeler TX 75754-5023.” A new Notice of Intent to Collect by Treasury Offset was sent to Petitioner on the same day, February 22, 2010 (Sec’y. Stat., ¶ 5.) There is no notice in HUD’s records that the second Notice was returned by U.S. Postal Service.

On April 13, 2011, HUD received a letter from Petitioner regarding the proposed offset. (Dillon Decl., Ex. B.) In that letter, Petitioner provided the Secretary with her updated mailing address. (*Id.*) On April 25, 2011, the Secretary sent another copy of the Notice of Intent, to Petitioner’s updated mailing address. (*Id.*)

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).

Here, Petitioner does not dispute the existence of the debt. Rather, Petitioner states that she wants “to challenge the interest due on this debt” and requests “that HUD settle for the principal amount of \$15,045.19.”¹ (Pet’r’s Hr’g. Req., filed June 1, 2011.) Petitioner’s request is based on her argument that “for a period of time after her tax returns had been garnished. I didn’t hear another word so I assumed HUD went after Kent Burgess for the Money.” (Pet’r’s

¹ This Court notes that it is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Such request may be discussed with Lester J. West, Director HUD Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

July E-mail.) She claims further that, “had I have known about this debt I would have settled it long before I accrued \$13,805.39 in interest.” (Pet’r’s Hr’g. Req.)

The Secretary claims, on the other hand, that the alleged debt remains past due and is legally enforceable against Petitioner. (Sec’y. Stat., p.1.) In response, the Secretary provides a copy of the Note that Petitioner signed and agreed, “to pay [lender] the principal sum of Fifteen thousand twenty-eight and 00/100 dollars (\$ 15,028.00), plus interest from the date of the loan disbursements *at the rate of 15.75% per year* until paid in full.” (Note, 1.) (emphasis added.) Petitioner also agreed to pay the “interest accrued on the unpaid balances of principal remaining from time to time, until paid in full.” (Note, 2.) Petitioner has even acknowledged the accuracy of the amount of the unpaid principal balance that provides the basis for calculating the interest that has accrued. Therefore, without any evidence presented to the contrary by Petitioner, the Court finds that the interest accrued on the unpaid principal balance is accurate and consistent with the terms and provisions of the Note.

Next, Petitioner claims that HUD failed to inform her “of her liability for the debt after she provided HUD with her divorce documents in 1995.” According to the terms of the Note, Petitioner agreed to:

WAIVER – You waive (to the extent permitted by law) demand, presentment, notice of acceleration, notice of intention to accelerate, protest, notice of dishonor and notice of protest. This means you give up the right to require us to demand payments of the amount due, *to give notice that amounts due have not been paid* or to give notice that we are making the contract immediately due.

(Note, 2.) (emphasis added.)

There is no indication from the record that Petitioner has produced evidence or cited any law that proves that HUD is required to remind her of her obligation to pay the Note. As a result, because there is no evidence in the record that the amount of interest accrued is inaccurate, I find that Petitioner is also legally obligated to pay the accrued interest at the rate agreed to by Petitioner and in the amount claimed by the Secretary.

Petitioner then claims that the Secretary should “go after Mr. Burgess for the debt – since the divorce assigns the debt to Mr. Burgess[ex-husband].” (Pet’r’s July E-mail.) Petitioner states that her ex-husband is “exclusively responsible for repaying the debt to Greentree” pursuant to the terms of her divorce decree. (Pet’r’s July E-mail.)

This Court has consistently maintained 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). As such, “the Secretary may proceed against any co-signer for the full amount of the debt because each co-signer is jointly and severally liable for the obligation.” *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Additionally, the Secretary’s right to collect

the alleged debt in this case emanates from the terms of the Note. *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the subject debt, she must submit evidence of either: (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

In the instant case, Petitioner has failed to produce evidence of a written release from her obligation to pay the alleged debt or evidence of valuable consideration paid to HUD in satisfaction of the debt that renders the alleged debt unenforceable. While Petitioner may be divorced from her ex-spouse, neither the Secretary nor the lender was a party to the divorce action.

Furthermore, in the state of Texas, it has been established that a divorce order does not affect a creditor's right to collect on a debt for which co-signors are jointly and severally liable. See *Blake v. Amoco Fed. Credit Union*, 900 S.W.2d 108 (Tex.App.—Houston [14th Dist.] 1995.) In *Blake v. Amoco Fed. Credit Union*, the appellants sued Amoco Federal Credit Union (AFCU) for failing to notify HUD when it assigned the note that, pursuant to a divorce order between Johnnie Blake and Rebecca Blake, ordered Rebecca Blake to pay certain joint debts and liabilities, and to indemnify and hold Johnnie Blake harmless for not paying those same obligations. *Blake v. Amoco Fed. Credit Union*, 900 S.W. at 109. The court held in *Blake* that AFCU was not liable for failing to disclose the terms of the Blakes' divorce order because the divorce order "did not affect Amoco's rights to collect the balance due on its notes from Johnnie." *Id.* at 112. The court also held that while the ex-husband remained liable for the note, "his remedy is an action for indemnity from his former wife, should he be required to repay the note." *Id.*

Petitioner likewise argues, in this case, that her ex-husband was ordered to pay the Note pursuant to their divorce decree. She claims that she "provided a copy of their divorce documents to HUD when she was notified that the debt remained outstanding." (Pet'r's November Letter, filed Nov. 28, 2011.) She also claims that she plans to "re-coup my garnished wages from my ex-husband once the debt to HUD is settled." (*Id.*) As the court determined in *Blake*, HUD's right to collect the debt, under Texas law, was not affected by Petitioner's divorce from her husband. In this case, I also find that HUD's right to collect from Petitioner was not affected by the terms of her divorce decree. Petitioner remains, as a result, jointly and severally liable to HUD for the alleged debt because the terms of the divorce decree did not release Petitioner from her legal obligation.

As a recourse, Petitioner may seek to enforce, in the state or local court, the divorce decree that was granted against her ex-husband so that Petitioner may recover from her ex-spouse monies paid to HUD by her in order to satisfy this legal obligation. See *Michael York*, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3.

ORDER

Based on the foregoing, 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.

/s/ original
Vanessa L. Hall
Administrative Judge

March 16, 2012