

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF APPEALS

In the Matter of:

Tressa Nicholas,

Petitioner

HUDOA No. 11-H-CH-LL56

Claim No. 7-210071270B

April 19, 2012

DECISION AND ORDER

On September 12, 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 (“HUD” or the “Government”) intended to seek administrative offset of any federal payments due to Petitioner in satisfaction of a debt allegedly owed to HUD.

Petitioner requested a hearing to contest the existence, amount, or enforceability of the alleged debt. In accordance with the procedures set forth at 24 C.F.R. §§ 17.69 and 17.73, the HUD Secretary has designated the administrative judges of the Office of Appeals to conduct a hearing to determine whether the alleged debt is past due and legally enforceable. 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 September 14, 2011. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), issued September 14, 2011.)

Background

On or about November 6, 2006, Tressa Nicholas (“Petitioner”) and Rodney Nicholas executed and delivered to the Secretary a Subordinate Note (“Note”) in the amount of \$5,512.08. (Secretary’s Statement (“Sec’y Stat.”), ¶ 2, filed December 27, 2011, Ex. B, p.1). In exchange, HUD paid the arrearages on Petitioner’s FHA-insured mortgage and Petitioner avoided foreclosure of her primary residence. (*Id.*)

The Subordinate Note cites specific events that make the debt become due and immediately payable. One of these events is the payment in full of the primary mortgage. (*See* Note, ¶ 4(A) (i).) The Note also specifies that Petitioner must make payment at:

Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410, or any such other place as [HUD] may designate in writing by notice to Borrower.

(Note, ¶ 3(B).)

On or about March 23, 2011, the FHA mortgage insurance on the primary mortgage was terminated as the lender indicated the mortgage was paid in full. (Sec'y Stat., Ex. C, Declaration of Gary Sautter, Acting Director, Asset Recovery Division, Financial Operations Center of HUD ("Sautter Decl."), dated September 21, 2011, ¶ 4.) Thus, pursuant to the terms and conditions of the Subordinate Note, payment is due in full. (Sec'y Stat., ¶ 5.)

HUD's attempts to collect the alleged debt from Petitioner have been unsuccessful. (Sec'y Stat., ¶ 6; Sautter Decl., ¶ 5.) A Notice of Intent to Collect by Treasury Offset, dated August 22, 2011, was sent to Petitioner. (Sec'y Stat. ¶ 7; Sautter Decl. ¶ 6.)

The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- (a) \$5,512.08 as the unpaid principal balance as of August 31, 2011;
- (b) \$13.77 as the unpaid interest on the principal balance at 1% per annum through August 31, 2011; and
- (c) interest on said principal balance from September 1, 2011 at 1% per annum until paid.

(Sec'y Stat., ¶ 8; Sautter Decl. ¶ 5.)

The Secretary requests a finding that Petitioner's debt is past due and legally enforceable.

Discussion

In an administrative offset proceeding, the Petitioner bears the burden of proving that all or part of the alleged debt is not past due or not legally enforceable. 24 C.F.R. § 17.69(b). Here, Petitioner disputes the existence or amount of the alleged debt and states that "the debt was repaid in March of 2010 when she refinanced her home." (Petitioner's Hearing Request ("Pet'r's Hr'g. Req."), p. 1, filed September 12, 2011.)

As support, Petitioner provided copies of a Statement of Account identifying what she alleges to be the loan payoff amount, and a Termination Letter from her lender to HUD. (Petitioner's Documentary Evidence ("Pet'r's Doc. Evid."), filed December 14, 2011, Attachments.) The Statement of Account, dated March 11, 2011, lists \$5,512.08 as the Original Mortgage Amount, the Unpaid Principal Balance, and the Total Payoff Amount. (*Id.* at p. 3.) The Termination Letter, dated March 18, 2011, states the "borrower's intent to close and terminate their rights to any future transactions on the above referenced account" and asks HUD to "send an executed satisfaction piece" to Petitioner's title company. (*Id.* at p. 4.)

A review of the Statement of Account provided by Petitioner identifies a list of various charges and payments, but it does not reflect a payment or disbursement to HUD for the alleged debt in this case. (*See* Pet'r's Doc. Evid., Attachment.) The Termination Letter, also signed and provided by Petitioner, identifies the "borrower's intent to close and terminate their rights to any future transactions on the above referenced account," the referenced account number being FHA account number 221357892. (*Id.*) (Emphasis added.) While the FHA account number and amount referenced by Petitioner are reflected on both documents, in the Statement of Account the alleged debt is identified as an unpaid principal balance, and on the Termination Letter there

is only an *intent to close and terminate* expressed by Petitioner in reference to the account identified. (See Pet'r's. Doc. Evid., Attachment.) (Emphasis added.)

The Secretary contends, on the other hand, that neither the Statement of Account nor the Termination Letter provides sufficient evidence that substantiates that certain funds were dispersed to HUD in satisfaction of the debt alleged to be owed in this case. As support, the Secretary presented copies of the Note and the Subordinate Mortgage (Sub. Mort.), both signed by Petitioner. Upon reviewing the Note, the language of the agreement indicates that one of the events that would trigger payment due on the amount payable under the Note would be payment in full of the primary mortgage. (See Sec'y. Stat., Ex. A., ¶ 4(A)(i)). But, the evidence as presented in the record does not support payment in full, or termination, of the alleged debt. The record also does not show that Petitioner has been released from her obligation to pay the alleged debt. (*Id.*) Further, the Subordinate Mortgage presented states that:

Upon payment of all sums secured by this Security Instrument,
Lender shall release this Security Instrument without charge to
Borrower;....

(Sec'y. Stat., Ex. B., ¶ 8.)

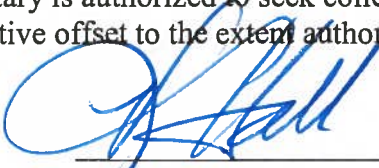
For Petitioner not to be held liable for the subject debt, she must submit evidence of either: (1) a written release from HUD showing that she is no longer liable for the debt; or, (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. *Franklin Harper*, HUDBCA 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 meet, by a preponderance of the evidence, her burden of proof that the alleged debt has been paid in full and that she has been released from her legal obligation to pay the amount claimed by the Secretary. The evidence as presented only shows a payoff amount to her lender, JP Morgan Chase Bank, but not a disbursement of funds to HUD in full payment of the debt that is the subject of this proceeding. While the Termination Letter presented by Petitioner showed a request for a written release from HUD, the record does not show that such a release was ever granted. I find, therefore, that Petitioner has failed to present sufficient evidence to complete the record and sufficiently refute or rebut the evidence presented by the Secretary. As a result, Petitioner remains legally obligated to pay the subject debt in the amount claimed by the Secretary.

ORDER

Based on the foregoing, 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 seek collection of this outstanding obligation by means of administrative offset to the extent authorized by law.



Vanessa L. Hall
Administrative Judge