



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

In the Matter of:

**Ella Jackson aka Ella A. Jackson Trimiar,**  
Petitioner

HUDOA No. 11-H-NY-LL06  
Claim No. 771124085

Ella Jackson  
360 3rd Street  
Cornelia, GA 26396

*Pro se*

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For the Secretary

**DECISION AND ORDER**

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 November 15, 2010, 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 December 17, 2010. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), issued December 17, 2010.)

## Background

Petitioner executed and delivered an Installment Sales Contract, Note & Disclosure Statement ("Note") to Peace Lake Enterprises, Inc. in the amount of \$17,500. The Note 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 March 24, 2011, ¶ 2, Ex. A.) The Note was later assigned to Remodelers National Funding Corp, which in turn assigned the Note to Firstplus Financial, Inc. f/k/a Remodelers National Funding Corp. to First Trust of California, N.A. (Id.) After default by Petitioner, the Note was assigned to HUD by First Trust of California N.A. by First Plus Financial, Inc. under the regulations governing the Title I Insurance Program. Declaration of Kathleen Porter ("Porter Decl."), dated March 23, 2011, ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$7,566.91 as the unpaid principal balance as of February 28, 2011;
- (b) \$94.59 as the unpaid interest on the principal balance at 5% per annum through February 28, 2011; and
- (c) interest on said principal balance from March 1, 2011 at 5% per annum until paid.

(Sec'y Stat. ¶ 6; Porter Decl. ¶ 4.)

A Due Process Notice dated January 25, 1999, was sent to Petitioner. (Sec'y Stat. ¶ 7; Porter Decl. ¶ 5.) Based on the terms of the Note, the Petitioner was to make 180 monthly installments of \$247.75 for a total of \$44,595.00. (Porter Decl. ¶ 6.)

## 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).

On November 15, 2010, Petitioner sent a letter to this Office, which was deemed to be a request for a hearing. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed November 15, 2010. In her letter, Petitioner claims that: (1) repayment of this debt by offsetting Petitioner's disability checks would create a financial hardship for Petitioner; (2) the alleged debt has been satisfied; and, (3) this debt is not legally enforceable.

Petitioner first argues that "I can't afford [sic] to have [HUD] take part of my disability check each month. I am so behind on all my bills and need this small monthly check just to make ends meet." (Pet'r's Hr'g Req.) In response, the Secretary cites *In re Teresa Swasey*,

HUDOA No. 08-M-NY-JJ39 (February 25, 2009) in support of her assertion that Petitioner's evidence of financial hardship is irrelevant in a treasury offset action. (Sec'y Stat., ¶ 13.)

In administrative offset cases, the position as stated by the Secretary is accurate. While this Office acknowledges Petitioner's financial circumstances, financial adversity raised as a defense in administrative offset case "does not invalidate a debt or release a debtor from a legal obligation to repay it." *In re Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986). This Office has consistently maintained that, "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." *In re Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005); *In re Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996); *In re Charles Lomax*, HUDBCA No. 87-2357-G679 (February 3, 1987). The reason financial hardship is not considered as a factor in offset cases is because no regulation or statute currently exists 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 as the debt owed by Petitioner is sought to be collected by means of administrative offset.

Second, Petitioner contends that the alleged debt has been satisfied. Specifically, Petitioner states that, "I feel that my mother paid this bill in full doing [sic] her life time [sic]. Each month she paid \$247.90 for a total of over 20 years for a [\$]17,000 loan. That add [sic] up to \$2500 a year and + 20 years that come [sic] out to \$51,980 and she never missed a payment." (Pet'r's Hr'g Req.) Petitioner added that, "I have cancelled checks where my mom paid on this bill for over 20 years...[and] copies of how much money you have taken from me over the years. Let me know as soon as possible what I need to do to appeal this matter." (*Id.*) Petitioner failed, however, to submit documentary evidence in support of her claim and in compliance with the Orders that were issued to her on three separate occasions. (Notice of Docketing, at p. 2; Order, issued January 27, 2011; Order to Show Cause, issued February 25, 2011.)

On March 24, 2011, the Secretary states, in response, that:

[t]he Note signed by Petitioner required 180 monthly payments of \$247.75 each. However, before going into default on November 30, 1996, only 101 monthly payments were mad. After paying the lender's insurance claim on the defaulted loan, \$12,140 remained due and owing on Petitioner's account. All payments received by HUD as a result of tax offsets or otherwise have been credited to Petitioner's account. The balance due...remains outstanding.

(internal citations omitted) (*Id.* at ¶¶ 9-12.) As support, the Secretary filed a copy of the Declaration of Kathleen M. Porter, which included Title I Claim for Loss (Part 2) Application Voucher and Title I Defaulted Loans case Reconstruction Report for this loan as evidence that an outstanding balance remains on Petitioner's account. (Sec'y. Stat., Exh. C, Attachs.)

In order for Petitioner to prove that she is no longer liable for this debt, “[t]here must be a release in writing from the lender specifically discharging Petitioner’s obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release.” *In re Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004) (citing *In re Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); *In re Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986)). To date, Petitioner has yet to file any evidence such as copies of cancelled checks or any other similar documentation that would prove that the debt has been paid in full. Petitioner also has failed to submit a copy of a written release from his legal obligation for the debt that is the subject of this proceeding. This Office has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable.” *In re Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (quoting, *In re Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Accordingly, absent any evidence from Petitioner to rebut the Secretary’s argument that the debt is past due in the amount claimed, I must find that Petitioner’s argument that the alleged debt has been satisfied fails for want of proof.

Lastly, Petitioner raises several arguments why the debt in this case is unenforceable. One of these arguments is that the Note itself is unenforceable because the value of the work performed “should not have cost my mom \$17,000.[00].” (Pet’r’s Hr’g. Req.)

[t]he people who did work on my mom’s house were not licesence [sic] contractors[;] the only worked [sic] that was done to my mom’s house were [sic] siding that was put over wood that was rotted [sic] due to the age of the house, 10 back steps with a hand rail and wood put on the front porch that covered exiting [sic] holes.

(*Id.*) Petitioner also added that, “[t]he city of Cornelia condemned that house and we had to tear it down...I have...picture’s [sic] of the house that the city condemned...” (*Id.*)

In response, the Secretary states that, “[a]lthough Petitioner now complains about the work that was performed on the home, it appears Petitioner signed a Completion Certificate at the time the work was performed without complaint” (Sec’y Stat., at ¶ 12; Porter Decl., *attach.*) The Secretary then filed, as proof, a copy of the Completion Certificate for Property Improvements (“Completion Certificate”) that was signed by Petitioner. The Completion Certificate stated in pertinent part:

**Do Not Sign this certificate until the dealer or contractor has satisfactorily completed the improvements in accordance with the terms of your contract or sales agreement.**

I (we) certify that:

- (1) The loan proceeds have been spent on property improvements that are eligible under the Title I regulations and in accordance with the contract or cost estimate furnished to the lender with my(our) credit application.

- (2) The property improvements have been completed in general accordance with the contract or cost estimate and to my (our) satisfaction.
- (3) ...
- (4) I (we) understand that the selection of the dealer or contractor and the acceptance of the materials used and the work performed is my(our) responsibility, and HUD does not guarantee the quality or workmanship of the property improvements.

(emphasis in original) (Porter Decl, Ex. C, Attached Completion Certificate.) This Certificate signed by Petitioner demonstrates that Petitioner acknowledged that the work was satisfactorily completed and as such cannot now claim that the work was unsatisfactorily completed. Although Petitioner claims that she felt she “had no choice but to sign with her [mother]” (Pet’r’s Hr’g Req.), Petitioner has failed to provide evidence to rebut that provided by the Secretary, or to establish some form of duress or coercion when she signed the Certificate, despite being ordered on three occasions to produce evidence in support of her position. (See Notice of Docketing, at p. 2; Order, issued January 27, 2011; Order to Show Cause, issued February 25, 2011.) Absent evidence that there were latent defects in the property improvements that Petitioner was unaware of, or that Petitioner was under actual duress when she signed the Completion Certificate, Petitioner, having acknowledged completion of the project by signing the Certificate of Completion, cannot now deny the work was originally satisfactorily completed. *See In re Jerry and Gayla Baker*, HUDBCA No. 04-D-CH-EE017 (March 23, 2005) (finding that the petitioners failed to produce evidence to rebut the presumption that the work was satisfactorily performed based on a signed completion certificate). Thus, I find that Petitioner’s claim that the debt in this case is unenforceable also must fail for want of proof.

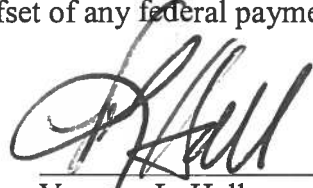
The arguments that remain regarding why Petitioner believes the alleged debt in this case is unenforceable relate to enforceability of the debt against her mother as a co-signer on the loan. For instance, Petitioner more specifically claims that her mother “had a 3rd grade education and really did not understand the contract that she signed[;] ...was 62 years old and half blind when she was conned into signing these forms[;]...was black...” (Pet’r’s Hr’g Req.) Even if Petitioner’s claims resulted in this debt being unenforceable against her mother as a co-signer on the Note, Petitioner and her mother remain jointly and severally liable for their legal obligation under the terms of the Note. “Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together.” *In re Mary Jane Lyons Hardy*, HUDBCA 87-1982-G314, at 3 (July 15, 1987). Therefore, I find that even if the debt was unenforceable against her mother as a co-signer, the Secretary may proceed against Petitioner for the full amount of the debt because in this case, under the terms of the Note, a co-signer is jointly and severally liable for the debt that is the subject of this proceeding.

### **ORDER**

For the reasons set forth above, I find the debt that is the subject of this proceeding to be 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.



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Vanessa L. Hall  
Administrative Judge

May 26, 2011